

# OFFICIAL STATEMENT

NEW ISSUE

BOOK ENTRY ONLY

RATINGS: S&P: "AAA/A-1+"

(See "RATINGS" herein.)

In the opinion of Jones Hall, A Professional Law Corporation, Bond Counsel, subject to certain qualifications and assumptions described herein, 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 Internal Revenue Code of 1986, as amended. Bond Counsel notes, 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, under existing law, exempt from personal income taxation imposed by the State of California. See "TAX MATTERS" herein.

**\$13,070,000**

## **ABAG Finance Authority for Nonprofit Corporations**

### **Variable Rate Demand**

### **Multifamily Housing Revenue Bonds**

### **(Geneva Pointe Apartments) 2004 Series A**

Dated: Date of Delivery

Price: 100%

CUSIP: 00037N LT 1

Maturity Date: March 15, 2037

The above captioned bonds (the "Bonds") are being issued by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") under a Trust Indenture, dated as of March 1, 2004 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), to provide funding for a mortgage loan (a "Loan") made by the Issuer to Geneva Elk Grove L.P., a California limited partnership (the "Borrower"), to finance the costs of acquiring, constructing and equipping a proposed multifamily rental housing project located in the City of Elk Grove, California. The Loan will be made pursuant to a Financing Agreement, dated as of the date of the Indenture (the "Financing Agreement"), among the Issuer, the Borrower and the Trustee.

The Bonds will be issued as weekly variable rate demand bonds and will bear interest at a Weekly Variable Rate, to be determined on a weekly basis as described herein. Interest on each issue of Bonds will be payable on the fifteenth day of each month, commencing April 15, 2004. Subject to satisfaction of certain conditions in the Indenture, the Bonds may be adjusted to one of the other interest rate Modes permitted by the Indenture (other permitted Modes being the Reset Rate Mode and the Fixed Rate Mode). If the Bonds are proposed to be adjusted to one of the other Modes, the Bonds will be subject to mandatory tender for purchase. See "THE BONDS—Mandatory Tender and Purchase" herein.

THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD BEGINNING ON THE CLOSING DATE AND ENDING ON THE EARLIER OF (A) THE DATE ON WHICH THE INTEREST RATE ON THE BONDS IS ADJUSTED TO A RESET RATE OR TO THE FIXED RATE OR (B) THE DATE ON WHICH THE CREDIT FACILITY DESCRIBED HEREIN NO LONGER SECURES THE BONDS.

Payment of the principal of and interest on the Bonds will be secured, to the extent described herein, by the Loan and by certain other resources and assets constituting the trust estate under the Indenture, all as described herein. In addition, Fannie Mae



has agreed to provide credit enhancement and liquidity support for the Bonds pursuant to and subject to the limitations of a Direct Pay Irrevocable Transferable Credit Enhancement Instrument, dated as of the Closing Date (the "Credit Facility"). The Credit Facility will also provide liquidity support for the purchase of Tendered Bonds.

The Credit Facility may be replaced by an Alternate Credit Facility at the option of the Borrower, which replacement will cause a mandatory tender of the Bonds. The Credit Facility (or an Alternate Credit Facility) will remain in effect at least throughout the initial Weekly Variable Rate Period with respect to the Bonds.

The Bonds are issuable only as fully registered bonds, without coupons, in the denomination of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Purchases 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 above 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. 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.

So long as the Bonds bear interest at a Weekly Variable Rate, the registered owners of the Bonds will have the right to tender their Bonds for purchase to the Tender Agent, at its Designated Office, on any Business Day upon seven days' written notice. The Bonds are also subject to mandatory tender and purchase as described herein. See "THE BONDS—Optional Tender" and "—Mandatory Tender and Purchase" herein. The Bonds are subject to mandatory redemption (including redemption in part upon conversion or in whole if the conditions to conversion are not timely satisfied) and optional redemption prior to maturity as described herein. See "THE BONDS—Redemption Provisions" herein.

**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 HAS ANY TAXING POWER.**

FANNIE MAE'S OBLIGATIONS WITH RESPECT TO THE BONDS ARE SOLELY AS PROVIDED IN THE CREDIT FACILITY. THE OBLIGATIONS OF FANNIE MAE UNDER THE CREDIT FACILITY WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED STOCKHOLDER OWNED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

This cover page contains certain information for quick reference only. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The Bonds are offered when, as and if issued and received by the Underwriter subject to the approval of certain legal matters by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the Issuer by Nixon Peabody LLP, San Francisco, California, for Fannie Mae by its Legal Department and by its special counsel, Arent Fox Kintner Plotkin & Kahn, PLLC, Washington, D.C.; for the Underwriter by Eichner & Norris PLLC, Washington, D.C.; and for the Borrower by Cox, Castle & Nicholson LLP, San Francisco, California. It is expected that the Bonds will be available for delivery through DTC in New York, New York on or about March 31, 2004.



*a Division of GMAC Commercial Holding Capital Markets Corp.*

Dated: March 30, 2004

No dealer, broker, salesman or other person has been authorized by the Issuer, the Borrower, Fannie Mae, the Underwriter or the Remarketing Agent to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by any or the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

THE INFORMATION IN THIS OFFICIAL STATEMENT HAS BEEN OBTAINED FROM THE ISSUER, THE BORROWER, FANNIE MAE, DTC AND OTHER SOURCES WHICH ARE BELIEVED TO BE RELIABLE BUT IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS BY, AND IS NOT TO BE CONSTRUED AS A REPRESENTATION OF, THE UNDERWRITER, THE REMARKETING AGENT, THE ISSUER (EXCEPT WITH RESPECT TO THE INFORMATION UNDER THE CAPTIONS “THE ISSUER” AND “NO LITIGATION—THE ISSUER”). IN PARTICULAR, THE ISSUER HAS NOT PROVIDED OR APPROVED ANY INFORMATION IN THIS OFFICIAL STATEMENT EXCEPT WITH RESPECT TO THE INFORMATION UNDER THE CAPTIONS “THE ISSUER” AND “NO LITIGATION—THE ISSUER” AND TAKES NO RESPONSIBILITY FOR ANY OTHER INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT.

FANNIE MAE HAS NOT PROVIDED OR APPROVED ANY INFORMATION IN THIS OFFICIAL STATEMENT EXCEPT WITH RESPECT TO THE DESCRIPTION UNDER THE CAPTION “FANNIE MAE,” TAKES NO RESPONSIBILITY FOR ANY OTHER INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT, AND MAKES NO REPRESENTATION AS TO THE CONTENTS OF THIS OFFICIAL STATEMENT (OTHER THAN WITH RESPECT TO THE INFORMATION UNDER THE CAPTION “FANNIE MAE”). WITHOUT LIMITING THE FOREGOING, FANNIE MAE MAKES NO REPRESENTATION AS TO THE SUITABILITY OF THE BONDS FOR ANY INVESTOR, THE FEASIBILITY OR PERFORMANCE OF THE PROJECT, OR COMPLIANCE WITH ANY SECURITIES, TAX OR OTHER LAWS OR REGULATIONS. FANNIE MAE’S ROLE WITH RESPECT TO THE BONDS IS LIMITED TO DELIVERING AND PROVIDING THE CREDIT FACILITY DESCRIBED HEREIN TO THE TRUSTEE.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## **OFFICIAL STATEMENT**

**\$13,070,000**

**ABAG Finance Authority for Nonprofit Corporations  
Variable Rate Demand  
Multifamily Housing Revenue Bonds  
(Geneva Pointe Apartments) 2004 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 Appendices 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 Appendices hereto, must be considered in its entirety. All capitalized terms used in this Official Statement that are not otherwise defined herein have the meanings ascribed to them in the Indenture, the Financing Agreement, the Regulatory Agreement, the Reimbursement Agreement, the Credit Facility and the Note (as each such term is hereinafter defined).

This Official Statement and the Appendices hereto set forth certain information relating to the issuance by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") of the above captioned bonds (the "Bonds"). The Bonds are being issued pursuant to the Act, the Bond Resolution and a Trust Indenture, dated as of March 1, 2004 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee").

The Bonds are being issued to provide funding for a mortgage loan (the "Loan") to be made by the Issuer to Geneva Elk Grove L.P., a California limited partnership (the "Borrower"). The proceeds of the Loan will be used to finance the costs of acquiring, constructing and equipping a proposed multifamily rental housing project known as Geneva Pointe Apartments (the "Project" or the "Mortgaged Property") located in the City of Elk Grove, California. The Loan will be made pursuant to a Financing Agreement, dated as of the date of the Indenture (the "Financing Agreement"), among the Issuer, the Trustee and the Borrower. Pursuant to the Indenture, the Issuer will assign the Financing Agreement (including all of the rights of the Issuer thereunder except for Reserved Rights), together with other property comprising the Trust Estate, to the Trustee for the benefit of the registered owners of the Bonds and Fannie Mae ("Fannie Mae" or the "Credit Provider"), as their interests may appear.

The Loan will be evidenced by a multifamily note (the "Note") executed by the Borrower in favor of the Issuer (see Appendix G hereto) and secured by a first lien priority Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Project (the "Security Instrument"). The Note is a nonrecourse obligation of the Borrower subject to certain limited exceptions. On and before the Conversion Date (defined below), payments on the Loan will be made to the Trustee. Following the Conversion Date, payments on the Loan will be made by the Borrower to GMAC Commercial Mortgage Corporation (the "Loan Servicer") and, in turn, will be remitted by the Loan Servicer, net of certain fees, escrows and other amounts, to Fannie Mae or the Trustee. The principal amount and payment provisions of the Note have been established and structured so that (a) the aggregate principal amount of the Note will equal the aggregate principal amount of the Outstanding Bonds and (b) the interest payable on the Note will not be less than the interest payable on the Outstanding Bonds. The payments required to be made by the Borrower under the Note, if timely made by the Borrower, are intended to be sufficient in amount to pay, when due, the principal of and interest on the Outstanding Bonds.

On the Closing Date, the Issuer will, pursuant to the Assignment and Intercreditor Agreement, dated as of the date of the Indenture (the "Assignment") by and among Fannie Mae, the Issuer and the Trustee, and acknowledged and accepted by the Borrower, assign the Loan to the Trustee and Fannie Mae, as their interests may appear, without recourse. Upon such assignment, the Loan will be part of the Trust Estate. Pursuant to the Assignment, Fannie Mae has the exclusive right to exercise all rights and remedies (other than Reserved Rights) under the Note, the Security Instrument, the Financing Agreement and all of the other Loan Documents (the "Assigned Documents"). Fannie Mae also has the right at any time, upon filing with the Trustee a certification reaffirming Fannie Mae's obligations under the Credit Facility, to direct the Trustee to assign all of its right, title and interest in and to the Assigned Documents to Fannie Mae.

The Loan will be made by the Issuer on the Closing Date in accordance with the requirements of Fannie Mae and subject to the terms and conditions of a Commitment (the "Fannie Mae Commitment") issued by Fannie Mae to the Loan Servicer with respect to the Loan. Under the Fannie Mae Commitment, Fannie Mae has agreed, in connection with the Loan, but subject to the terms and conditions of the Fannie Mae Commitment, to provide credit enhancement for the Loan and liquidity support for the Bonds pursuant to, and subject to, the limitations of a Direct Pay Irrevocable Transferable Credit Enhancement Instrument (the "Credit Facility"), a form of which is attached hereto as Appendix D. The obligation of the Borrower to reimburse Fannie Mae for any funds provided by Fannie Mae under the Credit Facility will be set forth in a Reimbursement Agreement, dated as of the date of the Indenture (the "Reimbursement Agreement"), between the Borrower and Fannie Mae. See Appendix F hereto.

Fannie Mae's participation in the financing of the Mortgaged Property will not extend beyond the Construction Phase (as defined in the Construction Phase Financing Agreement), unless the "Conditions to Conversion" set forth in the Fannie Mae Commitment and the Construction Phase Financing Agreement are satisfied on or before the Termination Date set forth in the Fannie Mae Commitment and the Construction Phase Financing Agreement (or, to the extent not satisfied, are waived by Fannie Mae). If the Conditions to Conversion set forth in the Fannie Mae Commitment and the Construction Phase Financing Agreement are satisfied on or before the Termination Date (or, to the extent not satisfied, are waived by Fannie Mae) the Loan Servicer is to issue a Conversion Notice on or before the Termination Date, in which event the Loan will convert from the Construction Phase to the Permanent Phase (as each such term is defined in the Construction Phase Financing Agreement) ("Conversion") effective on the date specified in the Conversion Notice (the "Conversion Date"), Fannie Mae's participation in the financing will continue and the Credit Facility will continue in effect. If, however, the Conditions to Conversion are not satisfied on or before the Termination Date (or, to the extent not satisfied, are not waived by Fannie Mae) with the result that the Loan Servicer fails to issue a Conversion Notice on or before the Termination Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and the Bonds will be subject to special mandatory redemption in whole. Any such special 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 special mandatory redemption in whole, the redemption price is to be paid with funds provided under the Credit Facility. Alternatively, in lieu of such redemption, the Bonds may be purchased by the Trustee for the account of the Construction Lender from amounts advanced under the Credit Facility. 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. The Termination Date is initially September 15, 2006. Certain extensions of the Termination Date are permitted subject to, and in accordance with, the terms and conditions of the Construction Phase Financing Agreement.

The Conditions to Conversion include, for example, completion of construction of the Mortgaged Property and the achievement of a specified level of occupancy from the leasing of units in the Mortgaged

Property. No assurance can be given that all of the Conditions to Conversion will be satisfied or that other events or circumstances may or may not occur as a result of which Conversion will not occur.

In addition, even if Conversion occurs, no assurance can be given that the principal amount of the Loan after Conversion, as finally determined in accordance with the Fannie Mae Commitment and the Construction Phase Financing Agreement, will not be less than the original principal amount of the Loan. If the principal amount of the Loan, as finally determined in accordance with the Fannie Mae Commitment and the Construction Phase Financing Agreement, is less than the original principal amount of the Loan, the principal amount of the Loan must, as a Condition to Conversion, be reduced by the Borrower's prepayment of the Loan in part (a "Pre Conversion Loan Equalization Payment"). Upon such prepayment, a corresponding portion of the Bonds will be subject to special mandatory redemption. Any such special mandatory redemption will be at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest to the Redemption Date. No such redemption will be made at a premium. If such prepayment in part is required as a Condition to Conversion and is not made, Conversion will not occur and the Bonds will be subject to special mandatory redemption in whole, as described above. See "THE BONDS—Redemption Provisions" herein.

Prior to Conversion, pursuant to the Construction Phase Financing Agreement, Fannie Mae will be protected against loss by the Construction Lender pursuant to a Letter of Credit acceptable to Fannie Mae. The occurrence of certain events concerning the Construction Lender, the Construction Phase Financing Agreement and the Letter of Credit may result in the prepayment of the Loan and a corresponding special mandatory redemption of the Bonds. See "THE BONDS—Redemption Provisions." The Letter of Credit will be delivered for the sole benefit of Fannie Mae and will not secure payment of the Bonds.

Simultaneously with the making of the Loan, the City of Elk Grove (the "City") has made a loan to the Borrower in the principal amount of \$1,700,000 (the "City Loan") to provide additional financing for the acquisition and construction of the Project. The Subordination Agreement made and entered into as of March 1, 2004 by and among Fannie Mae, the Trustee, the City and the Borrower (the "Subordination Agreement") provides that a default by the Borrower with respect to the City Loan could result, at the option of Fannie Mae, in the acceleration of the indebtedness evidenced by the Note which could cause the Bonds to be subject to early call for redemption or purchase, without any right to retain such Bonds.

In order to assure compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), there has been executed and delivered a Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date of the Indenture (the "Regulatory Agreement"), by and among the Issuer, the Trustee and the Borrower. The Regulatory Agreement requires that certain of the residential rental units in the Project be occupied or held for occupancy by tenants with incomes below the levels described herein under "APPENDIX E—SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT." The Project will also be subject to other occupancy and rental restrictions in connection with the City Loan as described herein under the heading "THE BORROWER AND THE PROJECT--Regulatory Agreements."

FANNIE MAE'S OBLIGATIONS WITH RESPECT TO THE BONDS ARE SOLELY AS PROVIDED IN THE CREDIT FACILITY. THE OBLIGATIONS OF FANNIE MAE UNDER THE CREDIT FACILITY WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED STOCKHOLDER OWNED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE

BONDS ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

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Brief descriptions of the Bonds, the sources of payment for the Bonds, the Issuer, Fannie Mae, the Borrower, the Manager, the Project and the Loan Servicer are set forth in this Official Statement and summaries of the Indenture, the Financing Agreement, the Regulatory Agreement, the Reimbursement Agreement and the Note and forms of the Bond Counsel Opinion and the Credit Facility are attached as appendices to this Official Statement. The information concerning Fannie Mae in this Official Statement has been obtained from Fannie Mae, and none of the Issuer, the Borrower, the Trustee, the Underwriter or the Remarketing Agent takes responsibility for the accuracy thereof. All references herein to the Indenture, the Financing Agreement, the Regulatory Agreement, the Credit Facility, the Reimbursement Agreement and the Note and all other documents and agreements are qualified in their entirety by reference to such documents and agreements, and all references to the Bonds are qualified by reference to the form thereof included in the Indenture, copies of which are available for inspection at the corporate trust office of the Trustee, Wells Fargo Bank, National Association, 120 Kearny Street, Suite 2530, MAC# A0190 252, San Francisco, California 94104, Attention: Corporate Trust Department.

## **THE BONDS**

### **General**

The Bonds are dated and will mature on the maturity date as set forth on the 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 Interest Payment Date. The initial rate of interest on the Bonds will be determined separately on or before the Closing Date and will be effective through and including April 7, 2004. Thereafter, the interest rate on the Bonds will be determined by the Remarketing Agent on each Rate Determination Date and will be the minimum rate of interest necessary, in the best professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on the applicable Rate Determination Date at par, plus accrued interest, if any, thereon (the "Weekly Variable Rate"); the Weekly Variable Rate determined will be effective for the seven day period beginning on Thursday of each week through and including the following Wednesday. The Remarketing Agent will provide notice of each Weekly Variable Rate (a) before 5:00 p.m., Eastern Time, on the Rate Determination Date by telephone to any Beneficial Owner upon request and to the Trustee, the Loan Servicer and the Construction Lender and (b) not later than the next Business Day to the other Remarketing Notice Parties by Electronic Means. Interest on the Bonds during the Weekly Variable Rate Period will be computed on the basis of a 365 or 366 day year, as applicable, for the actual number of days elapsed.

If, during the Weekly Variable Rate Period, the Remarketing Agent fails or refuses to determine the Weekly Variable Rate for any seven day period, the interest rate to be borne by the Bonds during such seven day period will be the latest BMA Index Rate published on or immediately before the Rate Determination Date (or, in the event the BMA Index Rate is no longer published, the last determined Weekly Variable Rate). The interest rate on the Bonds may not exceed the Maximum Rate.

### **Adjustment of the Interest Rate on the Bonds**

At the option of the Borrower and with the consent of the Credit Provider, the interest rate on all Outstanding Bonds may be adjusted on any Interest Payment Date from the Weekly Variable Rate to a Reset Rate for a Reset Period (which shall be applicable to each Issue) selected by the Borrower or to the Fixed Rate for the Fixed Rate Period selected by the Borrower (the date of such adjustment is an “Adjustment Date”).

The Bonds are subject to mandatory tender and purchase on each Adjustment Date, as set forth in, and in accordance with, the Indenture. See “THE BONDS—Mandatory Tender and Purchase” below.

### **Optional Tender**

**General.** During any Weekly Variable Rate Period, any Bond will be purchased by the Trustee on behalf of and as agent for the Borrower, but solely from the sources provided in the Indenture, on the demand of the Beneficial Owner of such Bond. The purchase price of any Bond tendered for purchase shall be 100% of the principal amount of such Bond plus accrued interest, if any, to the date of purchase. The Beneficial Owner may demand purchase of its Bond by delivery of a Bondholder Tender Notice complying with the requirements of the Indenture to the Tender Agent at its Designated Office on any Business Day. Any Bondholder Tender Notice delivered to the Tender Agent after 3:30 p.m. Eastern Time on a Business Day will be treated as received at 9:00 a.m. Eastern Time on the following Business Day. The date of purchase shall be the date selected by the Beneficial Owner in the Bondholder Tender Notice; provided, however, that such date must be a Business Day which is at least seven days after the date of delivery of the Bondholder Tender Notice to the Tender Agent. A Bondholder Tender Notice complies with the requirements of the Indenture if it:

- (a) is accompanied by a guaranty of signature acceptable to the Tender Agent; and
- (b) contains the CUSIP number of the Bond, the principal amount to be purchased (or portion of a Bond, provided that the retained portion is an Authorized Denomination), the name, address and tax identification number or social security number of the Beneficial Owner of the Bond demanding such payment and the purchase date.

**Irrevocability of Tender.** By delivering a Bondholder Tender Notice, subject to provisions related to the Book Entry System, the Beneficial Owner has irrevocably agreed to deliver the Tendered Bond (with an appropriate transfer of registration form executed in blank and accompanied by a guaranty of signature satisfactory to the Tender Agent) to the Designated Office of the Tender Agent or any other address designated by the Tender Agent, at or prior to 10:00 a.m., Eastern Time, on the date of purchase specified in the Bondholder Tender Notice. Any election by a Beneficial Owner to tender a Bond or Bonds (or a portion of a Bond or Bonds) for purchase on a Business Day in accordance with the Indenture shall also be binding on any transferee of the Beneficial Owner making such election.

**Compliance with Tender Requirements.** Bonds shall be required to be purchased as described above and provided in the Indenture only if the Bond so delivered to the Tender Agent conforms in all respects to the description thereof in the Bondholder Tender Notice. The Tender Agent shall determine in

its sole discretion whether a Bondholder Tender Notice complies with the requirements provided in the Indenture and whether Bonds delivered conform in all respects to the description thereof in the Bondholder Tender Notice. Such determination shall be binding on the other Remarketing Notice Parties and the Beneficial Owner of the Bonds.

***Untendered Bonds.*** If after delivery of a Bondholder Tender Notice to the Tender Agent the holder making such election fails to deliver the Bonds described in the Bondholder Tender Notice as required by the Indenture, each untendered Bond or portion of such untendered Bond (“Untendered Bond”) described in such Bondholder Tender Notice will be deemed to have been tendered to the Tender Agent for purchase, to the extent that there is on deposit in the Bond Purchase Fund on the applicable purchase date an amount sufficient to pay the purchase price of such Untendered Bond, and such Untendered Bond from and after such purchase date will cease to bear interest and no longer be considered to be Outstanding. The Trustee will promptly give notice by registered or certified first class mail, postage prepaid, to each Beneficial Owner of any Bond which has been deemed to have been purchased, pursuant to the Indenture, which notice will state that interest on such Untendered Bond ceased to accrue on and after the date of purchase and that moneys representing the purchase price of such Untendered Bond are available against delivery of such Untendered Bond at the Designated Office of the Tender Agent. The Issuer will sign and the Tender Agent will authenticate and deliver for redelivery in accordance with the Indenture a new Bond or Bonds in replacement of the Untendered Bond not so delivered. The replacement of any Bond shall not be deemed to create new indebtedness, but shall be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

***Purchase of Bond in Part.*** Upon surrender of any Bond for purchase in part only, the Issuer will execute and the Tender Agent will authenticate and deliver to the holder of such Bond a new Bond or Bonds of the same Issue, maturity and interest rate, of Authorized Denominations, in an aggregate principal amount equal to the unpurchased portion of the Bond surrendered.

***Payment and Sources of Purchase Price.*** The Tender Agent will make payment for any Tendered Bond to the Registered Owner at or before 4:00 p.m., Eastern Time, on the date for purchase specified in the Bondholder Tender Notice, first, from remarketing proceeds on deposit in the Bond Purchase Fund, second, from proceeds of a payment under the Credit Facility, and third, from moneys provided by the Borrower.

***Book Entry Only.*** Notwithstanding the above, as provided in the Indenture, during any period that the Bonds are Book Entry Bonds, (a) any Bondholder Tender Notice also must (i) provide evidence satisfactory to the Tender Agent that the party delivering the notice is the Beneficial Owner of the Bond(s) or a custodian for the Beneficial Owner referred to in the notice and (ii) if the Beneficial Owner is other than a DTC Participant, identify the DTC Participant through whom the Beneficial Owner will direct transfer; (b) on or before the purchase date, the Beneficial Owner must direct (or if the Beneficial Owner is not a DTC Participant, cause its DTC Participant to direct) the transfer of said Bond(s) on the records of DTC to the account of, or as directed by, the Trustee; and (c) Tendered Bond(s) will be purchased without physical delivery as if such Bond(s) had been so delivered and (d) the purchase price of such Bond(s) will be paid to DTC.

***No Purchase After Acceleration.*** No Bonds, other than Pledged Bonds, shall be purchased if the Trustee has given notice to the Remarketing Agent that there has occurred and is continuing an acceleration of the Bonds pursuant to the Indenture.

## **Mandatory Tender and Purchase**

***Mandatory Tender Dates (Other Than Upon Default); Notice.*** The holders of the Bonds shall be required to tender their Bonds to the Tender Agent for purchase on each Mandatory Tender Date by the Trustee acting on behalf of and as agent for the Borrower, but solely from the sources described below, at a purchase price equal to 100% of the principal amount of the Bonds plus accrued interest to the applicable Mandatory Tender Date. The Owner of any Bond may not elect to retain its Bond. Mandatory Tender Dates include each Adjustment Date (even if a proposed change in Mode fails to occur), each Substitution Date and each Extension Date. The Trustee shall give notice of Mandatory Tender Dates as follows:

(1) Not less than 30 days before any proposed Adjustment Date, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating the information required to be set forth in notices pursuant to the applicable provisions of the Indenture.

(2) Not less than ten days before any Substitution Date, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating (A) an Alternate Credit Facility will be substituted for the Credit Facility then in effect, (B) the Substitution Date, (C) that the Bonds are required to be tendered on the Substitution Date and (D) that Bondholders will not have the right to elect to retain their Bonds.

(3) Not less than ten days before any Extension Date, if the Trustee has not received a binding commitment to extend the applicable Credit Facility, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating (i) the Extension Date and that no commitment to extend the Credit Facility then in effect has been received by the Trustee, (ii) that such Bonds are required to be tendered on the Extension Date (unless an extension of the Alternate Credit Facility is received prior to the Extension Date), and (iii) that the Bondholders will not have the right to elect to retain such Bonds if an extension of the Credit Facility is not received.

***Mandatory Tender upon Default; Notice.*** The Bonds shall be subject to mandatory tender upon receipt by the Trustee of written notice from the Credit Provider stating that an Event of Default under the Reimbursement Agreement has occurred and directing that the Bonds be subject to mandatory tender. Such mandatory tender shall be made on the earliest practicable date, after notice of tender has been given to Bondholders and shall be payable solely from the sources described below at a purchase price equal to 100% of the principal amount of the Bonds plus accrued interest to the Mandatory Tender Date. The Owner of any Bond may not elect to retain its Bond. Immediately upon receipt by the Trustee of such written notice from the Credit Provider, the Trustee shall give notice by first class mail, postage prepaid, to the owners of the Bonds stating that (i) such event has occurred, (ii) the Bonds are required to be tendered on the Mandatory Tender Date specified in such notice, and (iii) the Bondholders will not have the right to elect to retain their Bonds.

***Untendered Bond.*** Any Bond which is not tendered on a Mandatory Tender Date (“Untendered Bond”) will be deemed to have been tendered to the Tender Agent as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date, shall cease to bear interest and no longer will be considered to be Outstanding. In the event of a failure by owners to deliver Bonds on the Mandatory Tender Date, such Owners will not be entitled to any payment (including any interest to accrue from and after the Mandatory Tender Date) other than the purchase price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of the Indenture, except for the purpose of payment of the purchase price for such Untendered Bond. The Issuer shall sign, and the Tender Agent shall authenticate and deliver to the Remarketing Agent for redelivery to the purchaser, a new Bond in

replacement of the Untendered Bond. The replacement of any such Untendered Bond shall not be deemed to create new indebtedness, but shall be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

***Payment and Sources of Purchase Price.*** The Tender Agent shall make payment for Bonds purchased as described above at or before 4:00 p.m. Eastern time on the Mandatory Tender Date. The Trustee shall pay the purchase price:

(1) for Bonds purchased as described under the subheading “Mandatory Tender Dates (Other Than Upon Default); Notice” above, first from remarketing proceeds on deposit in the Bond Purchase Fund, second, from proceeds of a payment under the Credit Facility, and third, from the Borrower.

(2) for Bonds purchased as described under the subheading “Mandatory Tender upon Default; Notice” above, first, from proceeds of a payment under the Credit Facility, and second, from the Borrower.

***Purchase Price Moneys Held in Trust.*** Following any Mandatory Tender Date, moneys deposited with the Tender Agent for the purchase of Bonds shall be held in trust in the Bond Purchase Fund and shall be paid to the former owners of such Bonds upon presentation of such Bonds at the Designated Office of the Tender Agent. The Tender Agent shall promptly give notice by registered or “certified first class” mail, postage prepaid, to each Registered Owner of Bonds whose Bonds are deemed to have been purchased stating 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 Designated Office of the Tender Agent. During any period that the Bonds are Book-Entry Bonds, (i) any notice delivered as described under this subheading shall be given only to the entity designated in the Letter of Representations, as required by the Indenture and (ii) it shall not be necessary for Bond(s) to be physically delivered on the date specified for purchase of such Bond(s), but such purchase shall be made as if such Bond(s) had been so delivered, and the purchase price of such Bond(s) shall be paid to DTC.

## **Redemption Provisions**

***Optional Redemption.*** The Bonds are subject to optional redemption in whole or part upon optional prepayment of the Loan by the Borrower. Optional redemptions may be made on any Interest Payment Date within a Weekly Variable Rate Period at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the Redemption Date. The principal of and accrued interest on any Bond being optionally redeemed will be paid from an Advance under the Credit Facility.

***Mandatory Redemption.*** The Bonds are subject to mandatory redemption on the earliest practicable Redemption Date for which timely notice of redemption can be given pursuant to the Indenture following the occurrence of the event requiring such redemption. The principal of and accrued interest on any Bond being redeemed will be paid from an Advance under the Credit Facility. Bonds will be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the Redemption Date. Bonds subject to mandatory redemption in part shall be redeemed in Authorized Denominations or shall be redeemed in such amounts so that the Bonds Outstanding following the redemption are in Authorized Denominations. If the Trustee receives an amount for the mandatory redemption of Bonds which is not equal to a whole integral multiple of the Authorized Denomination, the Trustee shall redeem Bonds in an amount equal to the next lowest whole integral multiple of the Authorized Denomination to the amount received by the Trustee and hold any excess amount in the Redemption Account.

(a) *Casualty or Condemnation.* The Bonds will be redeemed in whole or in part in the event and to the extent that proceeds of insurance from any casualty to, or proceeds of any award from any condemnation of, or any award as part of a settlement in lieu of condemnation of, the Mortgaged Property (“Proceeds”) are applied in accordance with the Security Instrument to the prepayment of the Loan.

(b) *After an Event of Default Under the Reimbursement Agreement.* The Bonds will be redeemed in whole or in part in an amount specified by and at the direction of the Credit Provider requiring that the Bonds be redeemed following any Event of Default under the Reimbursement Agreement. The Redemption Date shall be the earliest practicable date, but in no event shall such redemption occur later than two Business days prior to the date, of any, that the Credit Facility terminates on account of the Credit Provider’s giving of direction to the Trustee to redeem all of the Bonds.

(c) *Principal Reserve Fund.* The Bonds will be redeemed in whole or in part (i) on each Adjustment Date in an amount which has been transferred from the Principal Reserve Fund on such Adjustment Date to the Redemption Account pursuant to the Indenture; and (ii) on any Interest Payment Date in an amount equal to the amount which has been transferred from the Principal Reserve Fund on such Interest Payment Date to the Redemption Account pursuant to the Indenture.

(d) *Pre-Conversion Loan Equalization.* The Bonds shall be redeemed in part in the event that the Borrower makes a Pre Conversion Loan Equalization Payment. The principal amount of Bonds to be redeemed shall be the amount prepaid by the Borrower or, if such amount is not an integral multiple of an Authorized Denomination, the next lowest integral multiple of an Authorized Denomination to the amount prepaid.

(e) *Failure of Conversion or Borrower Default.* The Bonds shall be redeemed in whole if the Credit Provider notifies the Trustee that (i) the Conditions to Conversion have not been satisfied on or prior to the Termination Date, or (ii) a Borrower Default has occurred, or (iii) the Construction Lender has directed Fannie Mae to draw on the Letter of Credit due to an event of default by the Borrower under the Construction Phase Loan Agreement or the Construction Phase Reimbursement Agreement. The Bonds shall also be redeemed in whole at the time and as otherwise required by the Indenture as described in Appendix B hereto under the caption “The Loan Fund—Transfers to Effect Certain Mandatory Redemptions of the Bonds” if the Trustee purchases the Bonds for the account of the Construction Lender pursuant to the Indenture as described under the caption “Special Purchase in Lieu of Redemption” below.

(f) *Excess Loan Funds.* The Bonds shall be redeemed in whole or in part in the event and to the extent that amounts on deposit in the Loan Fund are not used to pay costs of the Project and are transferred to the Redemption Account pursuant to the Indenture.

## Notice of Redemption

For any redemption of Bonds pursuant to:

(1) the provisions of the indenture described under the heading “Redemption Provisions—Optional Redemption” above or the provisions of the Indenture described under the heading “Redemption Provisions—Mandatory Redemption” above (other than paragraph (b) under the heading “Redemption Provisions—Mandatory Redemption” above), the Trustee shall give notice of redemption by first class mail, postage prepaid, not less than ten days prior to the specified Redemption Date, to the Registered Owner of each Bond to be redeemed at the address of such Registered Owner as shown on the Bond Register. With respect to Book-Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository pursuant to the Letter of Representations, the Trustee shall not be required to give the notice set forth in the immediately preceding sentence.

(2) the provisions of the Indenture described in paragraph (b) under the heading “Redemption Provisions—Mandatory Redemption” above immediate notice of redemption will be given.

(3) the provisions of the indenture described under the heading “Redemption Provisions—Optional Redemption” above, the notice of redemption shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds (“Conditional Redemption”), and such notice and optional redemption shall be of no effect if either (i) by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds have not been deposited with the Trustee, or, if such moneys are deposited, are not available or (ii) the Trustee at the direction of the Credit Provider rescinds such notice on or prior to the scheduled redemption date. The Trustee shall cause a second notice of redemption to be sent by first class mail, postage prepaid, on or within 10 days after the thirtieth day after the Redemption Date to any Bondholder who has not submitted its Bond to the Trustee for payment.

Each notice of redemption must state: (i) the date of the redemption notice; (ii) the Closing Date and the complete official name of the Bonds, including the series designation; (iii) for each Bond to be redeemed, the interest rate or that the interest rate is variable, maturity date and in the case of a partial redemption of Bonds, the principal amount of each Bond to be redeemed; (iv) the CUSIP numbers of all Bonds being redeemed; (v) the place or places where the Bonds to be redeemed must be surrendered for payment and where amounts due upon such redemption will be payable upon surrender of the Bonds to be redeemed; (vi) the Redemption Date and redemption price of each Bond to be redeemed; (vii) the name, address, telephone number and contact person at the office of the Trustee with respect to such redemption; (viii) that interest on all Bonds to be redeemed will not accrue from and after the Redemption Date; (ix) if a redemption is a Conditional Redemption, that redemption is conditional upon receipt by the Trustee of sufficient moneys to redeem the Bonds including Available Moneys to pay any redemption premium and that the Credit Provider may direct the Trustee to cancel such redemption upon the occurrence of any Event of Default under the Reimbursement Agreement.

At the same time notice of redemption is sent to the Registered Owners the Trustee shall send notice of redemption by first class mail, overnight delivery service or other overnight means as is acceptable to the recipient, postage or service prepaid (or as specified below) (i) to the Rating Agency, (ii) if the Bonds are not subject to the Book Entry System, to certain municipal registered Securities Depositories which are known to the Trustee, on the second Business Day prior to the date the notice of redemption is mailed to the Bondholders, to be holding Bonds, and (iii) at least two of the national Information Services that disseminate securities redemption notices.

If notice is given as stated in the Indenture, failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

The Trustee shall rescind any Conditional Redemption if the Trustee does not have available an Advance under the Credit Facility in an amount sufficient to pay the principal of and accrued interest on the Bonds being optionally redeemed, on or before the Redemption Date or the Trustee has received a direction to cancel the Conditional Redemption from the Credit Provider. The Trustee shall give notice of rescission by the same means as is provided in the Indenture for the giving of notice of redemption or by Electronic Means confirmed in writing. The optional redemption shall be canceled once the Trustee has given notice of rescission. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and neither the rescission nor the failure of funds being made available in part or in whole on or before the Redemption Date shall constitute an Event of Default. Notwithstanding notice having been given in the manner described above, any optional redemption of Bonds shall be canceled with the consent of or at the direction of the Credit Provider if the Credit Provider has notified the Trustee in writing that an Event of Default under the Reimbursement Agreement has occurred.

### **Redemption Payments**

If notice of redemption has been given and the conditions for such redemption, if applicable, have been met, the Bonds called for redemption shall become due and payable on the Redemption Date, interest on those Bonds will cease to accrue from and after the Redemption Date and the called Bonds will no longer be Outstanding. The holders of the Bonds so called for redemption shall thereafter no longer have any security or benefit under the Indenture except to receive payment of the redemption price for such Bonds upon surrender of such Bonds to the Trustee. All moneys held by or on behalf of the Trustee for the redemption of particular Bonds will be held in trust for the account of the holders of the Bonds to be redeemed.

### **Selection of Bonds to be Redeemed Upon Partial Redemption**

If less than all the Outstanding Bonds are called for redemption, the Trustee shall select by lot, in such manner as it determines in its discretion, the Bonds, or portions of the Bonds in Authorized Denominations, to be redeemed. In the selection process (i) any Pledged Bonds Outstanding will be called for redemption before any other Bonds are selected for redemption, and (ii) if applicable, the Bonds with the highest interest rate will be called for redemption before any other Bonds are selected for redemption. For the purposes of the provisions described under this heading, Bonds that have previously been selected for redemption will not be deemed Outstanding. Notwithstanding the foregoing, the Securities Depository for Book Entry Bonds shall select the Bonds for redemption within particular maturities according to its stated procedures.

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

If the Bonds are called for redemption in whole or in part, the Bonds called for redemption may be purchased in lieu of redemption as described under this heading.

***Purchase in Lieu of Redemption.*** Purchase in lieu of redemption shall be available for all of the Bonds called for redemption or for such lesser portion of such Bonds as constitute Authorized Denominations. The Credit Provider or the Borrower with the written consent of the Credit Provider may direct the Trustee to purchase all or such lesser portion of the Bonds so called for redemption.

If so directed, the Trustee shall purchase such Bonds on the date which otherwise would be the Redemption Date. Any of the Bonds called for redemption that are not purchased in lieu of redemption shall be redeemed as otherwise required by the Indenture on the Redemption Date.

**Purchase Price.** The purchase price of the Bonds shall be equal to the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, which would have been payable on such Bonds on the Redemption Date for such redemption. To pay the purchase price of such Bonds, the Trustee shall use such funds, if any, in:

- (1) the Credit Facility Account to pay the principal and interest components of the purchase price; and
- (2) the Redemption Account to pay the redemption premium component of the purchase price;

that the Trustee would have used to pay the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, that would have been payable on the redemption of such Bonds on the Redemption Date. Otherwise, the Trustee shall pay the purchase price only from Available Moneys. The Trustee shall not purchase the Bonds as described under this heading if by no later than the Redemption Date, sufficient moneys have not been deposited with the Trustee, or such moneys are deposited, but are not available.

**No Notice to Bondholders.** No notice of the purchase in lieu of redemption shall be required to be given to the Bondholders (other than the notice of redemption otherwise required under the Indenture).

### **Special Purchase in Lieu of Redemption**

If all Bonds Outstanding are called for redemption under subparagraph (e) under the heading “Redemption Provisions—Mandatory Redemption” at any time that the Letter of Credit is in effect, the Bonds may, in lieu of such redemption, be purchased (“Special Purchase Bonds”) by the Trustee, at the written direction of the Construction Lender to the Trustee, for the account of the Construction Lender. Any purchase of Bonds under this heading shall be in whole and not in part. Such purchase will be made on the date the Bonds are otherwise scheduled to be redeemed (“Special Purchase Date”). The purchase price of the Special Purchase Bonds (“Special Purchase Price”) will be equal to the principal amount of the Special Purchase Bonds, plus accrued interest, if any, on the Special Purchase Bonds to the Special Purchase Date. The payment source will consist solely of funds to be advanced by the Credit Provider under the Credit Facility in connection with such redemption together with Available Moneys otherwise available under the Indenture to pay the redemption price of the Special Purchase Bonds as directed by the Credit Provider.

Bonds to be purchased under the foregoing paragraph which are not delivered to the Trustee on the Special Purchase Date will be deemed to have been so purchased and not redeemed on the Special Purchase Date and will cease to accrue interest as to the former owner on the Special Purchase Date. Special Purchase Bonds will be registered in the name of the Construction Lender or any third party designated by the Construction Lender and will be delivered to the party designated by the Construction Lender. If delivery of the Bonds is not possible, the Trustee will deliver a written entitlement order to the applicable financial intermediaries on whose records ownership of the Special Purchase Bonds is reflected directing the intermediaries to credit the security entitlement to the Special Purchase Bonds to the account of the Construction Lender. Following such purchase, the registered owner of the Special Purchase Bonds will be the owner of such Bonds for all purposes under the Indenture and interest

accruing on such Bonds from and after the Special Purchase Date will be payable solely to the registered owner of the Special Purchase Bonds.

### **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 or Fannie Mae. Neither the Underwriter, the Issuer nor Fannie Mae makes any representation whatsoever as to the accuracy, adequacy or completeness of such information.*

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities 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 Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world’s largest depository, 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 and provides asset servicing for over 2 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC’s 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”). DTC has Standard & Poor’s highest rating: AAA. 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 Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“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 Securities 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 Securities, except in the event that use of the book-entry system for the Securities is discontinued.

To facilitate subsequent transfers, all Securities 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 Securities 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 Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities 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.

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 Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities 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, if any, shall be sent to DTC. If less than all of the Securities 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 Securities 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 Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Securities 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 payable date in accordance with their respective 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, Fannie Mae, the Loan Servicer or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or Agent, 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.

A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the tender agent or the remarketing agent, as applicable, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the tender agent or the remarketing agent, as applicable. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's

records and followed by a book-entry credit of tendered Securities to the DTC account of the tender agent or the remarketing agent, as applicable.

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

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

NONE OF THE ISSUER, THE TRUSTEE, FANNIE MAE, THE LOAN SERVICER, THE REMARKETING AGENT AND 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 a Remarketing Agreement dated as of the date of the Indenture (the “Remarketing Agreement”), by and between the Remarketing Agent and the Borrower, the Remarketing Agent has been appointed to serve as remarketing agent with respect to the Bonds. The Remarketing Agent will determine the interest rates on the Bonds and is required to use its best efforts to remarket the Bonds.

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

### **General**

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

- (a) all right, title and interest of the Issuer in and to the Loan, including the Note, the Security Instrument and the other Loan Documents and in and to the Financing Agreement, reserving, however, the Reserved Rights;
- (b) all rights to receive payments on the Note and under the other Loan Documents, including all proceeds of insurance or condemnation awards;
- (c) all right, title and interest of the Issuer in and to the Revenues, the Net Bond Proceeds and the accrued interest, if any, derived from the sale of the Bonds, and all Funds and Accounts under the Indenture (including, without limitation, moneys, documents, securities, investments, Investment Income, instruments and general intangibles on deposit or otherwise held by the Trustee) but excluding all moneys in the Fees Account the Rebate Fund and the Costs of

Issuance Fund unless and to the extent funded with Net Bond Proceeds (including within such exclusion Investment Income retained in the Rebate Fund);

(d) all funds, moneys and securities and any and all other rights and interests in property, whether tangible or intangible, from time to time conveyed, mortgaged, pledged, assigned or transferred by delivery or by writing of any kind to the Trustee as additional security under the Indenture for the benefit of the Bondholders and the Credit Provider; and

(e) all of the proceeds of the foregoing, including, without limitation, Investments and Investment Income (except as excluded above).

The foregoing (collectively the “Trust Estate”) are pledged for the equal and proportionate benefit, security and protection (subject to the terms of the Indenture) of (a) 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 and (b) the Credit Provider to secure the payment of all amounts owed to the Credit Provider under the Credit Facility Documents. Under the Assignment, Fannie Mae has the right to direct the Trustee to assign the Loan to Fannie Mae, but only upon filing with the Trustee a certification reaffirming Fannie Mae’s obligations under the Credit Facility. Fannie Mae is obligated to assign the Loan Rights to the Trustee upon any Wrongful Dishonor (as defined in the Assignment).

### **Credit Facility**

In addition to the other security provided under the Indenture, the Bonds will be secured by the Credit Facility. The form of Credit Facility is attached hereto at Appendix D.

FANNIE MAE’S OBLIGATIONS WITH RESPECT TO THE BONDS ARE SOLELY AS PROVIDED IN THE CREDIT FACILITY. THE OBLIGATIONS OF FANNIE MAE UNDER THE CREDIT FACILITY WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED STOCKHOLDER OWNED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

### **Limited Liability**

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 HAS ANY TAXING POWER.

## **THE ISSUER**

### **Organization**

The Issuer is a joint exercise of powers agency 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.

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 HAS ANY TAXING POWER.

## **FANNIE MAE**

*The following information has been provided by Fannie Mae for use herein. While the information is believed to be reliable, none of the Issuer, the Trustee, the Remarketing Agent, the Borrower, the Loan Servicer nor any of their respective counsel, members, officers or employees make any representations as to the accuracy or sufficiency of such information.*

Fannie Mae is a federally chartered and stockholder owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 et seq. It is the largest investor in home mortgage loans in the United States with a net portfolio of \$921 billion of mortgage

loans as of September 30, 2003. Fannie Mae was originally established in 1938 as a United States government agency to provide supplemental liquidity to the mortgage market and became a stockholder owned and privately managed corporation by legislation enacted in 1968.

Fannie Mae purchases, sells, and otherwise deals in mortgages in the secondary market rather than as a primary lender. It does not make direct mortgage loans but acquires mortgage loans originated by others. In addition, Fannie Mae issues mortgage backed securities ("MBS"), primarily in exchange for pools of mortgage loans from lenders. Fannie Mae receives guaranty fees for its guarantee of timely payment of principal of and interest on MBS certificates.

Fannie Mae is subject to regulation by the Secretary of Housing and Urban Development ("HUD") and the Director of the independent Office of Federal Housing Enterprise Oversight within HUD. Approval of the Secretary of Treasury is required for Fannie Mae's issuance of its debt obligations and MBS. Five of the eighteen members of Fannie Mae's Board of Directors are appointed by the President of the United States, and the other thirteen are elected by the holders of Fannie Mae's common stock.

The securities of Fannie Mae are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than Fannie Mae.

As of September 30, 2003, Fannie Mae's core capital\* was \$32.75 billion. Information on Fannie Mae and its financial condition is contained in Fannie Mae's most current annual report on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are filed with the SEC. The SEC filings are available at the SEC's website at [www.sec.gov](http://www.sec.gov). The periodic reports filed by Fannie Mae with the SEC are also available on Fannie Mae's web site at <http://www.fanniemae.com/ir/sec>.

Fannie Mae makes no representation as to the contents of this Official Statement, the suitability of the bonds for any investor, the feasibility of performance of any project, or compliance with any securities, tax or other laws or regulations. Fannie Mae's role with respect to the Bonds is limited to issuing and discharging its obligations under the Credit Enhancement Facility and exercising the rights reserved to it in the Indenture and the Reimbursement Agreement.

## **SOURCES AND USES OF BOND FUNDS**

All of the Bond proceeds are anticipated to be deposited into the Project Account. Capitalized interest and costs of issuance are anticipated to be funded with a separate Borrower contribution.

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\* Core Capital is the sum of (a) the stated value of outstanding common stock, (b) the stated value of outstanding noncumulative perpetual preferred stock, (c) paid-in capital, and (d) retained earnings.

## PLAN OF FINANCING

The total permanent project costs of the Project is estimated by the Borrower to be approximately \$21,234,122, not including interim sources or uses of bond funds or accrued interest on the Bonds. The sources and uses of bond funds for the Project are projected to be approximately as follows:

<b>Sources of Funds:</b>	
Bond Proceeds	\$13,070,000
City Loan	1,700,000
Tax Credit Equity*	4,506,000
Interest Income from GIC & Pre-conversion NOI	583,400
Developer Note	<u>1,374,722</u>
Total	\$21,234,122
<b>Uses of Funds:</b>	
Land	\$1,428,000
Construction/Rehabilitation	11,179,600
Architecture and Engineering	171,400
Costs of Issuance	666,000
Other Financing Costs	840,800
Reserves	145,000
Construction Contingency	515,600
Government Fees	3,355,000
Developer Overhead	478,400
Developer Fee	<u>2,454,322</u>
Total	\$21,234,122

### **City Loan**

On the Closing Date, the City will make the subordinate City Loan to the Borrower in the principal amount of \$1,700,000 to provide additional financing for the Project. The obligation of the Borrower to repay the City Loan is evidenced by a subordinate promissory note dated March 15, 2004 (the "City Note") from the Borrower to the City. The City Note shall bear simple interest at the rate of four percent (4%) per annum on the principal amount outstanding commencing on April 1, 2007. Payments of principal and interest shall be made from residual cash flow as required by the City Note. Unless due sooner under the City Note, the City Loan principal balance and all accrued interest shall be due and payable on the earliest of (a) March 15, 2037, (b) the date the Project is sold or refinanced (except as specifically contemplated in the City Note) or (c) an event of default by the Borrower which has not been cured as provided for in the City loan agreement. The City Loan will be secured by a subordinate deed of trust on the Project. Payments due on the City Note are subordinate to those due on the Note.

### **Low Income Housing Tax Credit Based Equity Syndication**

Simultaneously with the issuance of the Bonds, the Borrower expects to sell to MMA Financial Warehousing, LLC and its affiliates (the "Tax Credit Partner") a 99.99% limited partnership interest in

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\* The Tax Credit Partner's contribution of the Tax Credit Equity is subject to the terms and conditions of the Borrower's Amended and Restated Agreement of Limited Partnership dated as of March 1, 2004.

the Borrower. Pursuant to this sale, the equity funding arrangements for the funding of the tax credit equity are expected to be approximately as follows: (a) \$500,000 to be funded on the Closing Date; (b) \$665,000 to be funded upon receipt of a building permit ready letter; (c) \$466,000 to be funded on the later to occur of (i) the seventy-five percent completion of the Project or (ii) August 1, 2005; (d) \$466,000 to be funded on the later to occur of (i) completion of the Project or (ii) September 1, 2005; (e) \$700,000 to be funded on the later to occur of (i) the date the Project satisfies the requirements of Section 42(h)(4) of the Code or (ii) October 1, 2005; (f) \$1,659,000 to be funded on the latest to occur of (i) the receipt by the partnership of properly executed Forms 8609 with respect to all of the buildings in the Project, (ii) 120% Debt Service Coverage Ratio for 3 consecutive months, or (iii) April 1, 2006; and (g) \$50,000 to be funded upon receipt of a properly recorded Tax Credit Regulatory Agreement (as defined herein). These funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the projections set forth above and neither the Issuer nor the Underwriters make any representation as to the availability of such funds.

## **THE BORROWER AND THE PROJECT**

*The information under this heading has been provided solely by the Borrower and has not been independently verified by the Issuer, the Underwriter, the Remarketing Agent, Fannie Mae, the Loan Servicer or any of their respective counsel, members, officers or employees. No representation whatsoever as to the accuracy, adequacy or completeness of such information is made by the Issuer, the Underwriter, the Remarketing Agent, Fannie Mae, the Loan Servicer or any of their respective counsel, members, officers or employees.*

### **The Borrower**

On the Closing Date, Geneva Elk Grove L.P., a California limited partnership (the “Borrower”), will own Geneva Pointe Apartments (the “Project”). The managing general partner of the Borrower will be Pacific Housing, Inc. (the “Managing General Partner”) a California nonprofit public benefit corporation and the co-general partner of the Borrower will be Anton Geneva, LLC (the “Co-General Partner”), a California limited liability company. The Tax Credit Partner and an affiliate thereof will also have an ownership interest in the Borrower.

The Managing General Partner was incorporated in Sacramento, in 1998 as a California nonprofit public benefit corporation and was granted exempt status as an organization under Section 501(c)(3) of the Internal Revenue Code. The specific charitable and public purposes for which the corporation is organized are (1) to maintain and expand the supply of safe and decent housing for low and moderate income households in California and (2) to lessen the burden of federal, state and local government by increasing the affordability of housing in California. In addition to its participation in the Project, the Managing General Partner owns, has developed or is now developing 20 apartment projects comprising a total of 3,394 units in California.

St. Anton Capital, LLC, a California limited liability company, is the sole member and manager of the Co-General Partner. The Co-General Partner and its affiliates acquire and develop new apartments, and rehabilitate existing apartments, throughout Northern California. The Co-General Partner and its affiliates own, have developed or are now developing 20 apartment projects comprising a total of 2,834 units in Northern California.

Simultaneously with the issuance of the Bonds, the Borrower expects to sell to the Tax Credit Partner interest in the Borrower. See “PLAN OF FINANCING” above.

The Borrower was recently formed, has no operating history and has no financial statements at this time.

**The Project**

The Project will be a residential rental project to be comprised of two and three-story apartment buildings containing a total of 152 units. The Project will be located on approximately 7.2 acres located near Old Calvine Road and Auberry Drive in the City of Elk Grove, Sacramento County, California. The Project is expected to be completed by July of 2005.

Project amenities include: dishwasher, garbage disposal, ice maker in refrigerator, range/oven, dual hydronic space heating system, air conditioning, washer and dryer hookups, and a patio/balcony. The interior finish will include countertops, wall-to-wall carpeting in the living areas, linoleum flooring in the kitchen/bathrooms and entryway and vertical blinds. The Project also contains a swimming pool, a community/building room, a business center with high speed Internet access, an exercise room, a tot lot and laundry facilities. Covered and uncovered parking for 227 cars will be provided.

The units will consist of the following:

		<u>Square Footage</u>	<u>Number of Units</u>
One Bedroom	One Bath	720	40
Two Bedrooms	Two Baths	1,000	72
Three Bedrooms	Two Baths	1,285	40

**Regulatory Agreements**

The Project is subject to the Regulatory Agreement, which imposes certain requirements on the Borrower with respect to the tax-exempt status of the Bonds under the Code, which include, among other requirements, a set aside of at least 40% of the units in the Project for rental to persons or families having incomes at or below 60% of Median Income for the area, adjusted for family size and determined in accordance with Section 142(d) of the Code, and certain other requirements under state law. 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% of median income for the area, adjusted for family size. As incorporated into the Regulatory Agreement, the Project will also be subject to additional restrictions under 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. See “APPENDIX D- SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT.”

In addition, in order for the Project to be eligible for federal low income housing tax credits, the Borrower will execute a tax credit agreement in compliance with the requirements of Section 42 of the Code (the “Tax Credit Regulatory Agreement”). The Tax Credit Regulatory Agreement will (a) require that (i) at least 31 of the units in the Project be reserved for lease to tenants with incomes at or below 50% of area median income adjusted for family size and (ii) restrict the rents which may be charged of occupancy of units in the Project to not more than 30% of 50% of area median income, adjusted for family size and (b) require that (i) an additional 60 of the units in the Project be reserved for lease to tenants with incomes at or below 60% of area median income adjusted for family size and (ii) restrict the

rents which may be charged of occupancy of units in the Project to not more than 30% of 60% of area median income, adjusted for family size.

Further, in exchange for the City providing financial assistance through the City Loan along with the deferral of certain fees, the Borrower will enter into a 45-year regulatory agreement (the “City Regulatory Agreement”) which will restrict the income levels of tenants of 31 of the units in the Project to amounts not greater than 50% of the area median income. Additionally, the City Regulatory Agreement will restrict the income levels of tenants of 47 of the remaining units in the Project to amounts not greater than 60% of the area median income. The City Regulatory Agreement will restrict the rents that may be charged for occupancy of units in the Project as described therein.

### **THE LOAN SERVICER**

*The following information has been provided by the Loan Servicer for use herein. While the information is believed to be reliable, none of the Issuer, the Underwriter, the Remarketing Agent the Borrower, Fannie Mae nor any of their respective counsel, members, officers or employees make any representations as to the accuracy or sufficiency of such information.*

Beginning on the Conversion Date, GMAC Commercial Mortgage Corporation (the “Loan Servicer”), will perform mortgage servicing functions with respect to the Loan on behalf of and in accordance with Fannie Mae requirements. The servicing arrangements between Fannie Mae and the Loan Servicer for the servicing of the Loan are solely between Fannie Mae and the Loan Servicer and neither the Issuer nor the Trustee is deemed to be party thereto or has any claim, right, obligation, duty or liability with respect to the servicing of the Loan.

The Loan Servicer will be obligated, pursuant to its arrangement with Fannie Mae and Fannie Mae’s servicing requirements, to perform diligently all services and duties customary to the servicing of mortgages, as well as those specifically prescribed by Fannie Mae. Fannie Mae will monitor the Loan Servicer’s performance and has the right to remove the Loan Servicer with or without cause. The duties performed by the Loan Servicer include general loan servicing responsibilities, collection and remittance of principal and interest payments, administration of mortgage escrow accounts and collection of insurance claims.

The selection (or replacement) of the Loan Servicer is in the sole and absolute discretion of Fannie Mae. The servicing arrangements between the Loan Servicer and Fannie Mae are subject to amendment or termination from time to time without the consent of the Issuer, the Trustee or the Borrower, and none of the Trustee, the Issuer or the Borrower has any rights under, and none is a third party beneficiary of, the servicing arrangements between the Loan Servicer and Fannie Mae.

The Loan Servicer is an approved DUS seller/loan servicer under Fannie Mae’s Delegated Underwriting and Servicing product line.

The Loan Servicer makes no representation as to the contents of this Official Statement, the suitability of the Bonds for any investor, the feasibility of performance of the Project or compliance with any securities, tax or other laws or regulations. The Loan Servicer’s role is limited to underwriting and servicing the Loan.

## **BONDHOLDERS' RISKS**

Purchase of the Bonds involves certain investment risks. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement (including the Appendices hereto) in order to make a judgment as to whether the Bonds are an appropriate investment. Certain of the risks associated with the purchase of the Bonds are described below. The following list of possible factors, while not setting forth all the factors which must be considered, contains some of the factors which should be considered prior to purchasing the Bonds. THIS DISCUSSION OF RISK FACTORS IS NOT, AND IS NOT INTENDED TO BE, COMPREHENSIVE OR EXHAUSTIVE.

### **Limited Liability**

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER. THE ISSUER IS NOT OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON EXCEPT FROM THE REVENUES OR ASSETS PLEDGED THEREFOR. THE BONDS ARE NOT A DEBT OF THE ISSUER, ABAG, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA, ABAG OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS. NEITHER THE ISSUER NOR THE TRUSTEE HAS ANY TAXING POWER.

FANNIE MAE'S OBLIGATIONS WITH RESPECT TO THE BONDS ARE SOLELY AS PROVIDED IN THE CREDIT FACILITY. THE OBLIGATIONS OF FANNIE MAE UNDER THE CREDIT FACILITY WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED STOCKHOLDER OWNED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

### **No Acceleration or Redemption Upon Loss of Tax Exemption**

The Borrower has covenanted and agreed to comply with the provisions of the Code relating to the exclusion from gross income of the interest payable on the Bonds for federal income tax purposes, and the financing documents contain provisions and procedures designed to assure compliance with such covenant. However, the Borrower's covenant to comply with the requirements of the Code is nonrecourse to the Borrower, and the Borrower's liability is limited to the revenues and assets comprising the Project. Furthermore, the Borrower's failure to comply with such provisions will not constitute a default under the Indenture and will not give rise to a redemption or acceleration of the Loan or the Bonds (unless Fannie Mae determines, in its sole and absolute discretion, that such failure will constitute such a default (see "THE BONDS—Redemption Provisions—Mandatory Redemption" and "APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Defaults and Remedies—Nondefault and Prohibition of Mandatory Redemption Upon Tax Event"). Consequently, interest on the Bonds may become includable in gross income for purposes of federal income taxation retroactive to the date of issuance of the Bonds by reason of the Borrower's failure to comply with the requirements of the Code, and the Issuer and the Trustee will not have remedies available to them to mitigate the adverse economic effects to the owners of the Bonds of such inclusion by reason of the Borrower's noncompliance.

## **Performance of the Project**

No assurance can be given as to the future performance of the Project. If there is a default by the Borrower under the Financing Agreement, including the failure by the Borrower to pay on the date due any amounts required to be paid by the Borrower under the Financing Agreement, the Note or the Security Instrument, Fannie Mae may give notice to the Trustee that it elects to accelerate the Bonds. Upon receipt of such notice, the Trustee is required pursuant to the Indenture to declare the principal amount of the Bonds to be immediately due and payable and immediately demand payment under the Credit Facility, which amounts will be applied to pay the principal of and interest on the Bonds. No premium will be paid on the Bonds in the event of the declaration of acceleration of maturity of the Bonds. See “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Defaults and Remedies,” “APPENDIX C—SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT—Events of Default” and “—Remedies Upon an Event of Default” and “THE BORROWER AND THE PROJECT.”

## **TAX MATTERS**

In the opinion of Jones Hall, a Professional Law Corporation, San Francisco, California, Bond Counsel, subject to certain qualifications described below 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 a “related person” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended (the “Code”). It should be noted, however, that, in the opinion of Bond Counsel, 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 of the preceding paragraph 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.

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

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.

The proposed form of the opinion of Bond Counsel is attached hereto as Appendix 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 Appendix A. The opinion of Bond Counsel will express no opinion and make no comment with respect to the sufficiency of the security for, or the marketability of, the Bonds.

Certain legal matters will be passed on for the Issuer by Nixon Peabody LLP, San Francisco, California, for Fannie Mae by its Legal Department and by its special counsel, Arent Fox Kintner Plotkin & Kahn, PLLC, Washington, D.C.; for the Borrower by Cox, Castle & Nicholson LLP, San Francisco, California; and for the Underwriter by its counsel, Eichner & Norris PLLC, Washington, D.C.

Payment of the fees and expenses of certain of the above-mentioned counsel, including Bond Counsel, are contingent upon issuance of the Bonds.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions on the legal issues explicitly addressed therein. By rendering the legal opinion, the opinion giver does not become an insurer or guarantor of an expression of professional judgment of the transaction opined upon, or of the future performance of parties to such transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## **NO LITIGATION**

### **The Issuer**

To the best knowledge of the Issuer, there is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the issuance of the Bonds or the execution or delivery of the Indenture, the Financing Agreement or the Regulatory Agreement or in any way contesting or affecting the validity of the foregoing or the Bond Resolution.

### **The Borrower**

To the best knowledge of the Borrower, there is no pending or threatened action, suit or proceeding seeking to restrain or enjoin the execution or delivery of the Bonds or in any way contesting or affecting the validity of the foregoing or which in any way contests the existence or powers of the Borrower, and there is no pending or threatened action, suit or proceeding pending against or relating to the Borrower or the Project or which could have a material adverse effect on the financial condition or operation of the Borrower or the Project.

## **ENFORCEABILITY OF REMEDIES**

The remedies available to the Trustee and the Owners of the Bonds upon an Event of Default under the Financing Agreement, the Regulatory Agreement or the Indenture are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, including specifically the Federal Bankruptcy Code (Title 11 of the

United States Code), the remedies provided for under the Federal Bankruptcy Code, the Financing Agreement, the Regulatory Agreement or the Indenture may not be readily available or may be limited.

In addition, the Financing Agreement and Regulatory Agreement provide that the obligations of the Borrower contained in such agreements (other than certain obligations to the Issuer and the Trustee individually and not on behalf of the Owners of the Bonds) will be limited obligations payable solely from the income and assets of the Borrower, and no partner of the Borrower shall have any personal liability for the satisfaction of any obligation of the Borrower under such agreements or of any claim against the Borrower arising out of such agreements or the Indenture.

The various legal opinions to be delivered in connection with the delivery of the Bonds, the Indenture, the Financing Agreement, the Regulatory Agreement and the Security Instrument will be qualified to the extent that the enforceability of certain legal rights related to the Bonds, the Indenture, the Financing Agreement and the Regulatory Agreement are subject to limitations imposed by such things as the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or a court of equity), including judicial limitations on rights to specific performance and bankruptcy, insolvency, reorganization.

## **RATINGS**

Standard & Poor's Ratings Services, a Division of The McGraw Hill Companies, Inc. (the "Rating Agency"), has assigned the ratings set forth on the cover hereof to the Bonds. Any desired explanation of the significance of the ratings should be obtained from the Rating Agency. The ratings are not a recommendation to buy, sell or hold the Bonds. There is no assurance that a particular rating will be maintained for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of the rating agency originally establishing the rating, circumstances so warrant. Neither the Underwriter nor the Issuer has undertaken responsibility either to bring to the attention of the registered Owner of the Bonds any proposed revision or withdrawal of the ratings of the Bonds or to oppose any such proposed revision or withdrawal. Any such change in or withdrawal of such a rating could have an adverse affect on the market price of the Bonds.

## **UNDERWRITING**

Newman and Associates, A Division of GMAC Commercial Holding Capital Markets Corp. (the "Underwriter") have agreed to purchase the Bonds and will be paid an underwriter's fee, equal to 0.75% of the principal amount of the Bonds from which the Underwriter will pay the costs associated with CUSIP and MSRB and certain other underwriting expenses. The initial public offering prices may be changed from time to time by the Underwriter.

The Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing Bonds into investment trusts) and certain dealer banks and banks acting as agents at prices lower than the public offering price stated on the cover of this Official Statement.

## **MULTIPLE ROLES OF PARTIES**

Affiliated subsidiaries of GMAC Commercial Holding Capital Corp. doing business as Newman Financial Services (“GMCHCC”) are acting as the Underwriter and Remarketing Agent for the Bonds and as Loan Servicer for the Loan. Conflicts of interest could arise by reason of the different capacities in which GMCHCC and its affiliated subsidiaries act in connection with the Bonds and the Loan.

## **MISCELLANEOUS**

Copies of the Indenture, the Financing Agreement, the Credit Facility, the Security Instrument, the Note and the Reimbursement Agreement are on file at the office of the Trustee and are available for inspection upon request.

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.

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[Issuer's Signature Page to Official Statement]

**ABAG FINANCE AUTHORITY FOR NONPROFIT  
CORPORATIONS**

By: /s/ Joseph Chan  
Chief Financial Officer

[Borrower's Signature Page to Official Statement]

**GENEVA ELK GROVE L.P.**, a  
California limited partnership

By: PACIFIC HOUSING, INC., a  
California nonprofit public benefit  
corporation, its Managing  
General Partner

By: /s/ Mark A. Wiese  
Mark A. Wiese,  
Executive Director

By: ANTON GENEVA, LLC, a  
California limited liability  
company, its Co-General Partner

By: ST. ANTON CAPITAL, LLC, a  
California limited liability  
company, its Manager

By: /s/ Steven L. Eggert  
Steven L. Eggert,  
Authorized Member

## APPENDIX A

### PROPOSED FORM OF OPINION OF BOND COUNSEL

March \_\_, 2004

ABAG Finance Authority for Nonprofit Corporations  
101 Eighth Street  
Oakland, California 94607

**OPINION:** \$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 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 \$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 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, as now in effect and as it may from time to time hereafter be amended and supplemented (the "Act"), and a Trust Indenture, dated as of March 1, 2004 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee, and approved by resolution of the Issuer adopted March 10, 2004. 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 Geneva Elk Grove 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 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 agreements 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. Pursuant to the Act, the Indenture creates a valid lien on the funds pledged by the Indenture for the security of the Bonds, subject to no prior lien granted under the Act.
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. Interest on the Bonds is excluded from gross income for federal income tax purposes, except during any period while an 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 of this paragraph 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. 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

## APPENDIX B

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a brief summary of certain provisions of the Indenture. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Indenture, a copy of which is on file with the Trustee.

#### Definitions

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

“Account” means an account established within a Fund.

“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 any proceeding instituted under the Bankruptcy Code or other applicable insolvency law by or against the Issuer.

“Adjustment Date” means any date on which the interest rate on the Bonds is adjusted to a different Mode or to a different Reset Rate. An Adjustment Date may only occur on an Interest Payment Date or, if such date is not a Business Day, the following Business Day. Any Reset Date and the Fixed Rate Adjustment Date are Adjustment Dates.

“Advance” means an advance made under the Credit Facility.

“Affiliate” as applied to any person means any other person directly or indirectly controlling, controlled by or under common control with that person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities or partnership interests or by contract or otherwise.

“Alternate Credit Facility” means a letter of credit (whether or not so named), surety bond, insurance policy, standby bond purchase agreement, credit enhancement instrument, collateral purchase agreement, mortgage backed security or similar agreement, instrument or facility (other than the initial Credit Facility) provided in accordance with the Financing Agreement.

“Alternate Credit Provider” means the provider of an Alternate Credit Facility.

“Assigned Rights” has the meaning given to that term in the Assignment.

“Assignment” means the Assignment and Intercreditor Agreement, dated as of the date of the Indenture, among the Issuer, the Trustee and Fannie Mae, and acknowledged, accepted and agreed to by the Borrower, as it may be amended, supplemented or restated from time to time.

“as their interests may appear” or “as its interest may appear” means, with reference to any of the Assigned Rights, the respective interests, exclusive of the Reserved Rights of the Issuer, of Fannie Mae and of the Trustee to such documents and rights as set forth in the Assignment.

“Authorized Borrower Representative” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer, the Loan Servicer, the Construction Lender, the Credit Provider and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it by the Borrower as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer, the Loan Servicer, the Construction Lender and the Credit Provider) a written certificate revoking such person’s authority to act in such capacity.

“Authorized Construction Lender Representative” means any person from time to time designated to act on behalf of the Construction Lender by written certificate furnished to the Issuer, the Trustee, the Loan Servicer, the Credit Provider and the Borrower containing the specimen signature of such person and authorized to act by resolution or other appropriate action of the Board of Directors of the Construction Lender or by its bylaws. Such resolution or other appropriate action may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Construction Lender Representative. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Construction Lender Representative is an Authorized Construction Lender Representative until such time as such provider files with it and with the Issuer, the Loan Servicer, the Credit Provider and the Borrower a written certificate identifying a different person or persons to act in such capacity.

“Authorized Denomination” means (a) during any Weekly Variable Rate Period, \$100,000 or any integral multiple of \$5,000 in excess of \$100,000, and (b) during any Reset Period or the Fixed Rate Period, \$5,000 or any integral multiple of \$5,000.

“Available Moneys” means, as of any date of determination, any of (a) the proceeds of the Bonds, (b) remarketing proceeds received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer or any guarantor of the Loan), (c) moneys received by the Trustee pursuant to a draw on the Credit Facility, (d) any other amounts, including the proceeds of refunding bonds, for which, in each case, the Trustee has received an Opinion of Counsel acceptable to each Rating Agency to the effect that the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) or be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code; (e) the monies paid by the Credit Provider for the purchase of Bonds in lieu of redemption pursuant to the Indenture; and (f) Investment Income derived from the investment of moneys described in clause (a), (b), (c) or (d).

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“Beneficial Owner” means, for any Bond which is held by a nominee, the beneficial owner of such Bond.

“BMA Index Rate” means the rate published in The Bond Market Association Municipal Swap Index, produced by Municipal Market Data, a Thomson Financial Services Company, or its successors.

“Bond” or “Bonds” means the Issuer’s Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A in the original aggregate principal amount of \$13,070,000.

“Bond Counsel” means (i) on the Closing Date, the law firm or law firms delivering the approving opinion(s) with respect to the Bonds or (ii) after the Closing Date, any law firm selected by the Issuer and acceptable to the Credit Provider, 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 Documents” means the Assignment, the Bonds, the Bond Purchase Agreement, the Credit Facility, the Disclosure Agreement (if any), the Financing Agreement, the Indenture, the Regulatory Agreement (and any other agreement relating to rental restrictions on the Mortgaged Property), the Remarketing Agreement, the Tax Certificate, any Tender Agent Agreement, and all other documents, instruments and agreements executed and delivered in connection with the issuance, sale, delivery and/or remarketing of the Bonds, as each such agreement or instrument may be amended, supplemented or restated from time to time. Any Forward Commitment Deposit Fee Instrument (as that term is defined in the Reimbursement Agreement) is not a Bond Document.

“Bondholder,” “holder,” “Owner,” “owner,” “Registered Owner” or “registered owner” means, with respect to any Bond, the owner of the Bond as shown on the Bond Register.

“Bondholder Tender Notice” means a written notice meeting the requirements of the Indenture.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated March 30, 2004, among the Underwriter, the Issuer and the Borrower relating to the Bonds.

“Bond Purchase Fund” means the Bond Purchase Fund created and established by the Indenture.

“Bond Register” means the Bond Register maintained by the Trustee pursuant to the Indenture.

“Bond Resolution” means the resolution adopted by the Issuer on March 10, 2004 authorizing and approving the issuance and sale of the Bonds and the execution and delivery of the Indenture, the Assignment, the Bond Purchase Agreement, the Disclosure Agreement, if any, the Financing Agreement, the Loan Documents, the Regulatory Agreement, the Tax Certificate and certain other documents, making certain appointments and determining certain details with respect to the Bonds.

“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 Geneva Elk Grove L.P., a limited partnership organized and existing under the laws of the State of California, and its successors and assigns.

“Borrower Documents” means the Bond Documents to which a Borrower is a party, the Credit Facility Documents to which a Borrower is a party, the Construction Phase Credit Documents to which the Borrower is a party and the Loan Documents and all other documents to which a Borrower is a party and which are being executed and delivered by the Borrower in connection with the transactions provided for in the Bond Documents, the Loan Documents and the Credit Facility Documents. Any Forward

Commitment Deposit Fee Instrument (as that term is defined in the Reimbursement Agreement) is not a Borrower Document.

“Business Day” means any day other than (a) a Saturday or a Sunday, (b) any day on which banking institutions located in the City of New York, New York are required or authorized by law or executive order to close, (c) any day on which banking institutions located in the city or cities in which the Designated Office of the Trustee or the Remarketing Agent is located are required or authorized by law or executive order to close, (d) prior to the Fixed Rate Adjustment Date, a day on which the New York Stock Exchange is closed, (e) on or after the Conversion Date, a day on which banking institutions located in the city in which the Designated Office of the Loan Servicer is located are required or authorized by law or executive order to close or (f) so long as a Credit Facility is in effect, any day on which the Credit Provider is closed.

“Certificate of Borrower” means the Certificate of Borrower dated the Closing Date, as it may be amended, supplemented or restated from time to time.

“Closing Date” means the date on which the Bonds are issued and delivered to or upon the order of the Underwriter.

“Code” means the Internal Revenue Code of 1986, as amended (“1986 Code”), each reference to the Code is deemed to include (a) any successor Internal Revenue law and (b) the applicable regulations, whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor Internal Revenue law and applicable regulations, whether final, temporary or proposed under such provision or successor provision.

“Conditional Redemption” means a redemption where the Trustee has stated in the notice of redemption that the redemption is conditioned upon deposit of funds as further described in the Indenture.

“Conditions to Conversion” has the meaning given to that term in the Construction Phase Financing Agreement.

“Construction Lender” means Wells Fargo Bank, National Association, subject to the Indenture which provides for the termination of all references to the Construction Lender from and after the Conversion Date.

“Construction Phase” has the meaning given to that term in the Construction Phase Financing Agreement.

“Construction Phase Credit Documents” means, individually and collectively, the Construction Phase Financing Agreement, the Letter of Credit, the Construction Phase Reimbursement Agreement and all other documents evidencing, securing or otherwise relating to the Letter of Credit, including all amendments, modifications, supplements and restatements of such documents.

“Construction Phase Financing Agreement” means the Construction Phase Financing Agreement, dated as of the date of the Indenture, among the Credit Provider, the Loan Servicer and the Construction Lender, as such agreement may be amended, modified, supplemented or restated from time to time.

“Construction Phase Reimbursement Agreement” means the Reimbursement Agreement, dated as of the date of the Indenture, between the Borrower and the Construction Lender, as such agreement may be amended, modified, supplemented or restated from time to time.

“Conversion” means the conversion of the Loan from the Construction Phase to the Permanent Phase.

“Conversion Date” means the date of the Conversion of the Loan pursuant to the Construction Phase Financing Agreement.

“Conversion Notice” has the meaning ascribed to the term “Final Notice of Conversion” in the Construction Phase Financing Agreement.

“Costs of Issuance” means:

(a) the fees, costs and expenses of (i) the Issuer (including, but not limited to, the Issuer’s initial bond administration fee), the Issuer’s counsel and the Issuer’s financial advisor, if any, (ii) the Underwriter (including discounts to the Underwriter or other purchasers of the Bonds, other than original issue discount, incurred in the issuance and sale of the Bonds) and the Underwriter’s counsel, (iii) Bond Counsel, (iv) the Trustee and the Trustee’s counsel, (v) the Loan Servicer and the Loan Servicer’s counsel, if any, (vi) the Credit Provider and the Credit Provider’s counsel, (vii) the Borrower’s counsel and the Borrower’s financial advisor, if any, (viii) the Rating Agency and (ix) the Construction Lender and the Construction Lender’s counsel;

(b) costs of printing the offering documents relating to the issuance of the Bonds; and

(c) all other fees, costs and expenses directly associated with the authorization issuance, sale and delivery of the Bonds, including printing costs, costs of reproducing documents, filing and recording fees, and any fees, costs and expenses required to be paid to the Loan Servicer in connection with the origination of the Loan.

“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 a portion of the Costs of Issuance.

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

“Costs of the Project” means the costs chargeable to the Mortgaged Property in accordance with generally accepted accounting principles, including, but not limited to, the costs of acquisition, construction, rehabilitation, reconstruction, restoration, repair, alteration, improvement and extension (in any of such events, “construction”) of any building, structure, facility or other improvement; stored materials for work in progress; the cost of machinery and equipment; the cost of the “Land” (as that term is defined in the Security Instrument), rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development necessary or useful and convenient for the Mortgaged Property; financing costs, including, but not limited to, the Costs of Issuance, engineering and inspection costs; fees paid to the developer of the Mortgaged Property; organization, administrative, insurance, legal, operating, letter of credit and other expenses of the Borrower actually incurred prior to and during construction; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Mortgaged Property or any part of it, including, but not limited to, the amount of interest expense incurred with respect to the Loan prior to the date of completion of the construction of the Project; insurance premiums payable by the Borrower and taxes and other governmental charges levied on the Mortgaged Property.

“Credit Facility Account” means the Credit Facility Account of the Revenue Fund.

“Credit Facility Documents” means the Reimbursement Agreement, the Certificate of Borrower, all Collateral Agreements (as that term is defined in the Security Instrument), the Construction Phase Financing Agreement, the Hedge Documents, the Hedge Security Agreement, the Hedge Reserve Escrow Account and Security Agreement, the Operating Reserve Agreement, the Pledge Agreement and all other agreements and documents securing the Credit Provider or otherwise relating to the provision of the Credit Facility, as any such agreement may be amended, supplemented or restated from time to time. Any Forward Commitment Deposit Fee Instrument (as that term is defined in the Reimbursement Agreement) is not a Credit Facility Document.

“Credit Provider” means, so long as the initial Credit Facility is in effect, Fannie Mae, or so long as any Alternate Credit Facility is in effect, the Alternate Credit Provider then obligated under the Alternate Credit Facility.

“Custodian” means the custodian under the Pledge Agreement.

“Designated Office” of the Trustee, the Tender Agent, the Remarketing Agent or the Loan Servicer means, respectively, the office of the Trustee, the Tender Agent, the Remarketing Agent or the Loan Servicer at the respective address set forth in the Indenture or at such other address as may be specified in writing by the Trustee, the Tender Agent, the Remarketing Agent or the Loan Servicer, as applicable, as provided in the Indenture.

“Disclosure Agreement” means any continuing disclosure agreement executed and delivered by the Borrower and the Trustee pursuant to the provisions of the Financing Agreement.

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

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

“Electronic Means” means a facsimile transmission or any other electronic means of communication approved in writing by the Credit Provider.

“Event of Default” means, as used in any Transaction Document, any event described in that document as an Event of Default. Any “Event of Default” as described in any Transaction Document is not an “Event of Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

“Extension Date” means, with respect to an Alternate Credit Facility, the date which is five Business days prior to the expiration date of the Alternate Credit Facility.

“Extraordinary Items” means, with respect to the Trustee, reasonable compensation for extraordinary services and/or reimbursement for reasonable extraordinary costs and expenses including reasonable fees and expenses of its counsel.

“Facility Fee” means the monthly fee owed to the Credit Provider by the Borrower pursuant to the Reimbursement Agreement.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term “Fair Market Value”

means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

“Fannie Mae” means Fannie Mae, a federally chartered and stockholder owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716 et seq., and its successors and assigns.

“Fees Account” means the Fees Account of the Revenue Fund.

“Fees and Expenses” means the fees, advances, out-of-pocket expenses, costs and other charges payable by the Borrower from time to time pursuant to the Financing Agreement.

“Financing Agreement” means the Financing Agreement, dated as of March 1, 2004, among the Issuer, the Trustee and the Borrower, as amended, supplemented or restated from time to time.

“Fixed Rate” means the rate of interest borne by the Bonds as determined in accordance with the Indenture.

“Fixed Rate Adjustment Date” means the date on which the interest rate on the Bonds adjusts from the Weekly Variable Rate or a Reset Rate to the Fixed Rate pursuant to the Indenture.

“Fixed Rate Period” means the period beginning on the Fixed Rate Adjustment Date and ending on the Maturity Date.

“Fund” means any fund created and established by the Indenture.

“Government Obligations” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

“Hedge Documents” has the meaning given that term in the Hedge Security Agreement

“Hedge Reserve Escrow Account and Security Agreement” means the Hedge Reserve Escrow Account and Security Agreement (Tax Exempt Uncommingled Custodial Securities Account) dated as of the date of the Indenture among the Borrower, the Loan Servicer and Fannie Mae, as amended, supplemented or restated from time to time.

“Hedge Security Agreement” means the Hedge Security Agreement (Tax Exempt Uncommingled Custodial Securities Account) dated as of the date of the Indenture among the Borrower, the Loan Servicer and Fannie Mae.

“Highest Rating Category” has the meaning, with respect to an Investment, given in this definition. If the Bonds are rated by a Rating Agency, the term “Highest Rating Category” means, with

respect to an Investment, that the Investment is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Agency” means, with respect to an Investment, the Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A 1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG 1” (for fixed rate) or “VMIG 1” (for variable rate) for one year or less and “Aaa” for greater than one year. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Highest Rating Category, then such Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment will be deemed to be rated below the Highest Rating Category. For example, an Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Indenture” means the Trust Indenture, as amended, supplemented or restated from time to time.

“Interest Account” means the Interest Account of the Revenue Fund.

“Interest Payment Date” means during any Weekly Variable Rate Period (a) the fifteenth day of each calendar month commencing on the first Interest Payment Date set forth on the cover hereof; (b) each Adjustment Date; (c) for Bonds subject to redemption in whole or in part on any date, the date of such redemption; (d) the Maturity Date; and (e) for all Bonds any date determined pursuant to the Indenture.

“Interest Requirement” means during the Weekly Variable Rate Period, 35 days’ interest on the Bonds at the Maximum Rate on the basis of a 365 or 366 day year, as applicable, for the actual number of days elapsed or such other number of days as may be required by the Rating Agency.

“Investment” means any Permitted Investment and any other investment held under the Indenture that does not constitute a Permitted Investment.

“Investment Agreement” means a Permitted Investment described in paragraph (g) of the definition of the term “Permitted Investments.”

“Investment Income” means the earnings, profits and accreted value derived from the investment of moneys pursuant to the Indenture.

“Issuer” means the 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 Assignment, the Bonds, the Financing 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 Issuer’s annual fee in the amount set forth in the Indenture payable annually by the Borrower under the Financing Agreement and pursuant to the provisions of the Regulatory Agreement.

“Letter of Credit” means, individually or collectively, as the context may require, the letter of credit to be issued and delivered by or on behalf of the Construction Lender pursuant to, and which satisfies all requirements of, the Construction Phase Financing Agreement, any amendment to the letter of credit and any replacement letter of credit, and any confirmation of the Letter of Credit issued and delivered in accordance with the Construction Phase Financing Agreement.

“Loan” means the loan made by the Issuer to the Borrower pursuant to the Financing Agreement for the purpose of providing funds to the Borrower to finance the acquisition, construction and equipping of the Mortgaged Property.

“Loan Documents” means, collectively, the Note, the Security Instrument and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. Neither the Financing Agreement nor the Regulatory Agreement is a Loan Document and neither document is secured by the Security Instrument.

“Loan Fund” means the Loan Fund created under the Indenture.

“Loan Servicer” means the multifamily mortgage loan servicer designated from time to time by the Credit Provider. The initial Loan Servicer is identified herein under the heading “THE LOAN SERVICER.”

“Mandatory Tender Date” means any date on which Bonds are required to be tendered pursuant to the Indenture, including any proposed Adjustment Date, Adjustment Date, Substitution Date, Extension Date or date specified by the Trustee as provided in the Indenture as described herein under the heading “THE BONDS—Mandatory Tender and Purchase—Mandatory Tender Upon Default; Notice.”

“Maturity Date” means the maturity date set forth on the cover hereof, or in the event the Bonds are adjusted to the Fixed Rate Mode and a Sinking Fund Schedule is established, the maturity date of all serial Bonds, if any.

“Maximum Rate” means 12% per annum; provided, however, that the Maximum Rate may be increased if the Trustee receives (a) the written consent of the Credit Provider and the Borrower to a specified higher Maximum Rate not to exceed the lesser of the maximum rate permitted by law to be paid on the Bonds and the maximum rate chargeable on the Loan, (b) an opinion of Bond Counsel to the effect that such higher Maximum Rate is permitted by law and will not adversely affect either the validity of the Bonds or the exclusion of the interest payable on the Bonds from gross income for federal income tax purposes, and (c) a new or amended Credit Facility in an amount equal to the sum of (i) the then outstanding principal amount of the Bonds and (ii) the new Interest Requirement calculated using the new Maximum Rate.

“Mode” means any of the Weekly Variable Rate, the Reset Rate and the Fixed Rate.

“Moody’s” means Moody’s Investors Service, a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by the Credit Provider, as assigns credit ratings.

“Mortgaged Property” means the real property described in the Security Instrument, together with all improvements, fixtures and personal property (to the extent of the Borrower’s interest therein) and located on such real property.

“Net Bond Proceeds” means the total proceeds derived from the issuance, sale and delivery of the Bonds, representing the total purchase price of the Bonds, including any premium paid as part of the purchase price of the Bonds, but excluding the accrued interest, if any, on the Bonds paid by the initial purchaser(s) of the Bonds.

“Note” means the Multifamily Note (together with all addenda thereto), dated as of the date of the Indenture, executed by the Borrower in favor of the Issuer, as it may be amended, supplemented or restated from time to time or any mortgage note executed in substitution therefor in accordance with the Bond Documents, as such substitute note may be amended, supplemented or restated from time to time.

“Note Interest” has the meaning given to that term in the Note.

“Operating Reserve Agreement” means the Operating Reserve and Security Agreement (Tax Exempt Uncommingled Custodial Securities Account) dated as of the date of the Indenture, among the Borrower, the Loan Servicer, as collateral agent for the Credit Provider, and the Credit Provider, as such agreement may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Opinion of Counsel” means a written opinion of legal counsel, acceptable to the recipient(s) of such opinion. If the opinion is with respect to an interpretation of federal tax laws or regulations or bankruptcy matters, such legal counsel also must be an attorney or firm of attorneys experienced in such matters.

“Outstanding” means, when used with reference to the Bonds at any date as of which the amount of Outstanding Bonds is to be determined, all Bonds which have been authenticated and delivered under the Indenture except:

- (a) Bonds cancelled or delivered for cancellation at or prior to such date;
- (b) Bonds deemed to be paid in accordance with the Indenture; and
- (c) Bonds in lieu of which others have been authenticated under the Indenture.

In determining whether the owners 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, Bonds which are owned or held by or for the account of the Borrower and Pledged Bonds will be disregarded and deemed not to be Outstanding under the Indenture for the purpose of any such determination unless all Bonds are Pledged Bonds, Bonds owned or held by or for the account of the Borrower or a combination of Pledged Bonds and Bonds owned by or held for the account of the Borrower. In determining whether the Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which are registered in the name of or known by the Trustee to be held for the account of the Borrower, including Pledged Bonds, will be disregarded.

“Permitted Investments” means to the extent authorized by law for investment of moneys of the Issuer:

- (a) Government Obligations.
- (b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the

United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.

(d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short term obligations are rated in the Highest Rating Category.

(e) Commercial paper rated in the Highest Rating Category.

(f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution's unsecured short term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully insured by the Federal Deposit Insurance Corporation.

(g) An agreement held by the Trustee for the investment of moneys at a guaranteed rate with (i) the Credit Provider or (ii) a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to the Credit Provider; and provided further that such agreement includes the following restrictions:

(i) the invested funds will be available for withdrawal without penalty or premium, at any time that (A) the Trustee is required to pay moneys from the Fund(s) established under the Indenture to which the agreement is applicable, or (B) any Rating Agency indicates that it will lower or actually lowers, suspends or withdraws the rating on the Bonds on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement;

(ii) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks pari passu with all other unsecured unsubordinated obligations of the provider, and, if applicable, the guarantor or insurer of the agreement;

(iii) the Trustee receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

(iv) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Second Highest Rating Category, the provider must, within 10 days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian,

such collateralization to be effected in a manner and in an amount sufficient to maintain the then current rating of the Bonds, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, so as to maintain the then current rating of the Bonds, (B) at the request of the Trustee or the Credit Provider repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the downgraded provider may elect which of the remedies to the downgrade (other than the remedy set out in (B)) to perform.

Notwithstanding anything else in this Paragraph (g) to the contrary and with respect only to any agreement described in this Paragraph or any guarantee or insurance for any such agreement which is to be in effect for any period after the Conversion Date, any reference in this Paragraph to the “Second Highest Rating Category” will be deemed deleted so that the only acceptable rating category for such an agreement, guarantee or insurance will be the Highest Rating Category.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAM G or AAAM by S&P or Aaa by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Credit Provider, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraph (b) or (c). If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAM G or AAAM by S&P, if S&P is a Rating Agency, or Aaa by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rate AAAM G or AAAM by S&P or Aaa by Moody’s. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Credit Provider, the Construction Lender and each Rating Agency.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception shall not apply to any obligation that provides for the optional or mandatory tender, at par, by the holder of such obligation at least once within one year of the date of purchase, Government Obligations irrevocably deposited with the Trustee for payment of Bonds pursuant to the Indenture, and Permitted Investments listed in paragraphs (g) and (i);

(2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation;

(3) Any asset backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset backed securities and auto loan asset backed securities;

(4) Any interest only or principal only stripped security;

(5) Any obligation bearing interest at an inverse floating rate;

(6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity;

(7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index;

(8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment; and

(9) Any investment to which S&P has added an “r” or “t” highlighter.

“Person” means a natural person, estate, trust, corporation, partnership, limited liability company, association, public body or any other organization or entity (whether governmental or private).

“Pledge Agreement” means the Pledged Bonds, Custody and Security Agreement, dated as of the date of the Indenture, among the Borrower, the Trustee, in its capacity as collateral agent for the Credit Provider, and the Credit Provider, as such agreement may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Pledged Bond” means any Bond during the period from and including the date of its purchase by the Trustee on behalf of and as agent for the Borrower with the proceeds of an Advance under the Credit Facility, to, but excluding, the date on which the Pledged Bonds Advance made by the Credit Provider on account of such Pledged Bond is reinstated under the Credit Facility.

“Potential Default” means, as used in any Transaction Document, any event that has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default as described in that document. Any “Potential Default” as described in any Transaction Document is not a “Potential Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

“Pre Conversion Loan Equalization Payment” has the meaning given to that term in the Note.

“Preference Claim” has the meaning given that term in the Indenture.

“Principal Amount” means, with respect to an issue of the Bonds, the original principal amount of such issue of the Bonds on the Closing Date.

“Principal Reserve Amount” means \$2,601,400.

“Principal Reserve Fund” means the Principal Reserve Fund created and established by the Indenture.

“Principal Reserve Schedule” means the Schedule of Deposits to Principal Reserve Fund attached to the Reimbursement Agreement, as such schedule may be amended, supplemented or restated from time to time.

“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, (f) securities dealer approved in writing by the Credit Provider the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (g) any other entity which is acceptable to the Credit Provider. 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.

“Rate Determination Date” means with respect to the Weekly Variable Rate, Wednesday of each week, or if such Wednesday is not a Business Day, the first Business Day immediately preceding such Wednesday.

“Rating Agency” means any nationally recognized statistical rating agency then maintaining a rating on the Bonds.

“Rebate Analyst” means a Person that is (a) qualified and experienced in the calculation of rebate payments under Section 148 of the Code in compliance with the arbitrage rebate regulations promulgated under the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

“Rebate Analyst’s Fee” means the annual continuing fee of the Rebate Analyst, if any, in the amount set forth in the Indenture for its rebate calculation services.

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

“Record Date” means, with respect to any Interest Payment Date, (i) if the Bonds bear interest at the Weekly Variable Rate, the Business Day before the Interest Payment Date and (ii) if the Bonds bear interest at a Reset Rate or the Fixed Rate, the first day of the month in which the Interest Payment Date occurs.

“Redemption Account” means the Redemption Account of the Revenue Fund.

“Redemption Date” means any date upon which Bonds are to be redeemed pursuant to the Indenture.

"Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants relating to the Mortgaged Property, dated as of March 1, 2004, among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.

"Reimbursement Agreement" means the Reimbursement Agreement, dated as of the date of the Indenture, between the Credit Provider and the Borrower, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

"Remarketing Agent" means Newman and Associates, A Division of GMAC Commercial Holding Capital Markets Corp., or any successor as Remarketing Agent designated in accordance with the Indenture.

"Remarketing Agent's Fee" means the continuing fee of the Remarketing Agent for its remarketing services.

"Remarketing Agreement" means the Remarketing Agreement, dated as of the date of the Indenture, by the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

"Remarketing Notice Parties" means the Borrower, Issuer, Trustee, Tender Agent, Remarketing Agent, Construction Lender, Credit Provider and Loan Servicer.

"Reserved Rights" means those certain rights of the Issuer under the Financing Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices and to enforce notice and reporting requirements, its right to inspect and audit the books, records and premises of the Borrower and of the Mortgaged Property, its right to collect attorneys' fees and related expenses, its right to specifically enforce the Borrower's covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Financing Agreement relating to the Reserved Rights.

"Reset Date" means any date upon which the Bonds begin to bear interest at a Reset Rate for the Reset Period then beginning.

"Reset Period" means each period of ten years or more selected by the Borrower, or such shorter period as may be selected by the Borrower with the prior written consent of the Credit Provider, during which the Bonds bear interest at a Reset Rate.

"Reset Rate" means the rate of interest borne by the Bonds as determined in accordance with the Indenture.

"Revenue Fund" means the Revenue Fund created and established by the Indenture.

"Revenues" means all (i) payments made under the Credit Facility, (ii) Investment Income (excluding Investment Income earned from moneys on deposit in the Principal Reserve Fund, the Rebate Fund, the Fees Account and the Costs of Issuance Fund, but including Investment Income earned on Net Bond Proceeds deposited into the Costs of Issuance Fund and Investment Income on such Investment Income) and (iii) payments made under the Note.

"Second Highest Rating Category" means, with respect to an Investment, that the Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for the

general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Second Highest Rating Category” means, with respect to an Investment, that the Investment is rated by S&P or Moody’s in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax exempt municipal debt established by S&P is “AA” for a term greater than one year, with corresponding ratings by Moody’s of “Aa.” If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Second Highest Rating Category, then such Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated “AA” by S&P and “A” by Moody’s is not rated in the Second Highest Rating Category.

“Securities Depository” means, initially, DTC, and its successors and assigns, and any replacement securities depository appointed under the Indenture.

“Security” means the Trust Estate and the Credit Facility.

“Sinking Fund Payment” means, as of any particular date of calculation, the amount required to be paid by the Issuer on a single future date for the retirement of Outstanding Bonds which mature after such future date, but excluding any amount payable by the Issuer by reason of the maturity of a Bond or by optional redemption at the election of the Issuer.

“Sinking Fund Schedule” means a schedule of principal amounts of Bonds to mature or be subject to redemption through the application of Sinking Fund Payments on the specified dates and/or a schedule of principal amounts of Bonds maturing as serial Bonds.

“S&P” means Standard & Poor’s Ratings Services, a Division of The McGraw Hill Companies, Inc., and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by the Credit Provider, as assigns credit ratings.

“State” means the State of California.

“Substitution Date” means the date upon which an Alternate Credit Facility is to be substituted for the Credit Facility then in effect, which date must be an Interest Payment Date during a Weekly Variable Rate Period so long as Fannie Mae is the provider of the Credit Facility, and thereafter on any Business Day, or an Adjustment Date which immediately follows a Reset Period.

“Tax Certificate” means the Certificate As To Arbitrage, dated the Closing Date, executed and delivered by the Issuer and the Borrower, together with the Certificate Regarding Use of Proceeds, dated the Closing Date, executed and delivered by the Borrower.

“Tax Event” has the meaning given to that term in the Indenture.

“Tender Agent” means the Tender Agent named in the Indenture (initially, Wells Fargo Bank, National Association) or its successor as Tender Agent under the Indenture named in accordance with the Indenture.

“Tender Agent Agreement” means any Tender Agent Agreement entered into by the Issuer, the Trustee and the Tender Agent in the event that the Trustee does not serve as Tender Agent under the Indenture, as such agreement may be amended, supplemented or restated from time to time.

“Tender Date” means any Mandatory Tender Date or any other date on which Bondholders are permitted under the Indenture to tender their Bonds for purchase.

“Tendered Bond” means any Bond which has been tendered to the Tender Agent for purchase pursuant to the Indenture.

“Termination Date” has the meaning given to that term in the Construction Phase Financing Agreement.

“Third Party Fees” means the Issuer’s Fee, the Rebate Analyst’s Fee, the Remarketing Agent’s Fee, the Tender Agent’s Fee and the Trustee’s Annual Fee. Neither the Fees and Expenses nor the Facility Fee is a Third Party Fee.

“Transaction Documents” means the Bond Documents, the Loan Documents and the Credit Facility Documents.

“Trust Estate” means the property, interests, rights, money, securities and other amounts pledged and assigned pursuant to the Indenture and the property, rights, money, securities and other amounts pledged and assigned by the Issuer to the Trustee and the Credit Provider pursuant to the Assignment.

“Trustee’s Annual Fee” means the annual continuing trust administration fee of the Trustee in the amount set forth in the Indenture payable by the Borrower as provided in the Financing Agreement, payable as provided in the Indenture.

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

“Week” means any seven day period during a Weekly Variable Rate Period beginning on Thursday and ending on and including the following Wednesday, except that:

- (a) the first Week will begin on the Closing Date and end on and include the following Wednesday;
- (b) the first Week of a Weekly Variable Rate Period immediately following an Adjustment Date will begin on such Adjustment Date and end on and include the following Wednesday;
- (c) any Week ending immediately before an Adjustment Date will begin on a Thursday and end on the day before such Adjustment Date;
- (d) the final Week will begin on a Thursday and end on the earlier of an Adjustment Date or the Maturity Date; and
- (e) the first and last Weeks of a Weekly Variable Rate Period may consist of more (but not more than 13) or less than seven days.

“Weekly Variable Rate” means the variable rate of interest per annum for the Bonds determined from time to time during the Weekly Variable Rate Period in accordance with the Indenture.

“Weekly Variable Rate Period” means the period commencing on the Closing Date or an Adjustment Date on which the interest rate on the Bonds is adjusted from the Reset Rate to the Weekly Variable Rate and ending on the day preceding the following Adjustment Date or the Maturity Date.

“Wrongful Dishonor” means an uncured failure by the Credit Provider to make an Advance to the Trustee upon proper presentation of documents which conform to the terms and conditions of the Credit Facility.

## **Funds and Accounts**

*Creation of Funds and Accounts.* The following Funds and Accounts are created with the Trustee:

- (a) the Loan Fund;
- (b) the Revenue Fund and within the Revenue Fund, the Interest Account, the Credit Facility Account, the Redemption Account and the Fees Account;
- (c) the Costs of Issuance Fund and within the Costs of Issuance Fund, the Costs of Issuance Deposit Account and the Net Bond Proceeds Account;
- (d) the Rebate Fund;
- (e) so long as any Bonds are Outstanding and have not been adjusted to the Fixed Rate, the Bond Purchase Fund; and
- (f) the Principal Reserve Fund.

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

## **The Loan Fund**

*Disbursements from the Loan Fund.* The Trustee shall disburse amounts on deposit in the Loan Fund as provided in the Indenture for the purpose of paying Costs of the Project and otherwise as provided in the Indenture.

### *Transfers to Effect Certain Mandatory Redemptions of Bonds.*

(1) Conversion; Excess Loan Funds. On the Conversion Date (and, if applicable, from time to time after the Conversion Date) the Trustee shall transfer to the Redemption Account such amounts remaining on deposit in the Loan Fund, excluding from such transfer, however, any amount the Loan Servicer determines are required to pay Costs of the Project which are then not yet due and payable or which are then being contested in good faith. The Trustee shall apply any amounts so transferred to the redemption of Bonds as described in this Official Statement under paragraph (f) under the heading “THE BONDS—Redemption Provisions—Mandatory Redemptions.”

(2) Failure of Conversion or Borrower Default. If the Credit Provider notifies the Trustee as described in this Official Statement under paragraph (e) under the heading “THE BONDS—Redemption Provisions—Mandatory Redemptions” that either (i) the Conditions to Conversion have not been satisfied prior to the Termination Date or (ii) a Borrower Default has occurred or (iii) the Construction Lender has directed Fannie Mae to draw on the Letter of Credit due to an event of default by the Borrower under the Construction Phase Loan Agreement or the Construction Phase Reimbursement Agreement, then:

(A) the Trustee shall not make any further disbursement from the Loan Fund for the purpose of paying Costs of the Project; and

(B) the Trustee shall transfer any amounts remaining on deposit in the Loan Fund to the Redemption Account three Business days prior to the Redemption Date determined for the redemption of the Bonds as described in this Official Statement under paragraph (e) under the heading “THE BONDS—Redemption Provisions—Mandatory Redemptions.”

If, however, the Trustee purchases the Bonds for the account of the Construction Lender as described in this Official Statement under the heading “THE BONDS—Special Purchase in Lieu of Redemption,” the Trustee shall make the transfer described in clause (B) above on such later date as the Construction Lender shall specify, but in any event not later than three years after the Closing Date. The Trustee shall apply any amounts so transferred to the Redemption Account to the redemption of Bonds as described in this Official Statement under paragraph (e) under the heading “THE BONDS—Redemption Provisions—Mandatory Redemptions.”

(3) Certain Other Mandatory Redemptions. Immediately prior to any mandatory redemption of the Bonds in whole as described in this Official Statement under paragraphs (a) or (e) under the heading “THE BONDS—Redemption Provisions—Mandatory Redemptions,” any amounts then remaining in the Loan Fund shall, at the written direction of the Credit Provider, be transferred to the Redemption Account to be applied to the redemption of Bonds pursuant to the applicable provision.

#### **Revenue Fund—Interest Account**

***Deposits Into the Interest Account.*** The Trustee will deposit each of the following amounts into the Interest Account:

(1) moneys provided by or on behalf of the Borrower relating to an interest payment under the Note whether paid pursuant to the Assignment or otherwise;

(2) moneys provided by or on behalf of the Borrower for the payment of the Facility Fee to the Credit Provider under the Reimbursement Agreement whether paid pursuant to the Assignment or otherwise;

(3) all Investment Income on the Funds and Accounts (except that Investment Income earned on amounts on deposit in the Loan Fund, Rebate Fund, Costs of Issuance Fund, and the Principal Reserve Fund shall be credited to and retained in those respective Funds or Accounts); and

(4) any other moneys made available for deposit into the Interest Account from any other source, including, but not limited to, any excess amounts in the Bond Purchase Fund pursuant to the Indenture.

***Disbursements From the Interest Account.*** The Trustee will disburse or transfer, as applicable, moneys on deposit in the Interest Account at the following times and apply such moneys in the following manner and in the following order of priority:

(1) on each (i) Interest Payment Date on or prior to the Conversion Date, (ii) Redemption Date and (iii) date of acceleration of the Bonds, the Trustee shall disburse to the

Credit Provider the amount of any Advance under the Credit Facility relating to the payment of interest on the Bonds;

(2) in the event of a Wrongful Dishonor, until such Wrongful Dishonor is cured, the Trustee shall disburse to the Bondholders on each Interest Payment Date, an amount equal to the interest due on the Bonds on such date;

(3) on each Interest Payment Date on or prior to Conversion, to the Credit Provider the amount of its Facility Fee; and

(4) If the Credit Provider or the Loan Servicer gives written notice to the Trustee at any time to the effect that there is any unreimbursed Advance under the Credit Facility or any other amount required to be paid by the Borrower to the Credit Provider under the Loan Documents, the Bond Documents or the Credit Facility Documents remains unpaid, then the Trustee shall transfer any Investment Income earned on the Interest Account from and after the preceding Interest Payment Date or the Closing Date, as applicable, to the Credit Provider but not in an amount which exceeds the amount stated as unpaid by the Credit Provider in its notice to the Trustee; and

(5) Unless there is (A) a deficiency in the Principal Reserve Fund, the Fees Account or the Rebate Fund or (B) other than as described in paragraph (3) above, an Event of Default under the Reimbursement Agreement or any Bond Document or a default under any Loan Document has occurred and is continuing, on each Interest Payment Date the Trustee shall disburse to the Borrower the Investment Income earned on or transferred to the Interest Account from and after the preceding Interest Payment Date or the Closing Date, as applicable. If a deficiency exists in the Principal Reserve Fund, the Fees Account or the Rebate Fund, such Investment Income shall be transferred to the Principal Reserve Fund, the Fees Account and/or the Rebate Fund, in that order of priority, prior to any payment to the Borrower.

#### **The Revenue Fund—Redemption Account**

*Deposits Into the Redemption Account.* The Trustee will deposit each of the following amounts into the Redemption Account:

(a) Available Moneys provided by or on behalf of the Borrower to fund the premium payable on the Bonds in connection with a redemption of such Bonds which amount shall be held in a segregated subaccount in the Redemption Account;

(b) moneys transferred from the Loan Fund pursuant to the Indenture;

(c) moneys provided by or on behalf of the Borrower relating to a principal payment, including any prepayment under the Note;

(d) moneys required under the Indenture to be transferred from the Principal Reserve Fund to the Redemption Account; and

(e) any other amount received by the Trustee and required by the terms of the Indenture or the Financing Agreement to be deposited into the Redemption Account.

*Disbursements From the Redemption Account.* On each Redemption Date, date of acceleration of the Bonds and Maturity Date, the Trustee shall disburse from the Redemption Account (a) to the Credit

Provider, the amount of any Advance under the Credit Facility relating to the payment of principal on the Bonds or (b) in the event of a Wrongful Dishonor, to the Bondholders, an amount equal to the principal due on the Bonds on such date. In addition, on any date on which premium payable on Bonds in connection with a redemption of such Bonds is due, the Trustee shall disburse to the Bondholders, from the segregated subaccount in the Redemption Account, Available Moneys in an amount sufficient to pay such premium.

#### **Revenue Fund—Credit Facility Account**

***Deposits into the Credit Facility Account.*** The Trustee shall deposit into the Credit Facility Account all Advances under the Credit Facility, except for (i) Advances on account of Issuer’s Fee and (ii) Pledged Bond Advances. That portion of any Advance on account of Issuer’s Fee shall be deposited into the Fees Account. Any Pledged Bond Advance shall be deposited into the Bond Purchase Fund pursuant to the Indenture. No other moneys will be deposited into the Credit Facility Account and the Credit Facility Account shall be maintained as a segregated account and moneys therein shall not be commingled with any other moneys held under the Indenture. The Credit Facility Account shall be closed at such time as the Credit Provider has no continuing liability under the Credit Facility.

***Transfers from the Credit Facility Account.*** The Trustee shall cause amounts deposited into the Credit Facility Account to be applied on the date payment is due to the payments for which the Advance was made pursuant to the Credit Facility. In no event shall amounts in the Credit Facility Account be applied to the payment of principal of and interest and any premium on any Pledged Bonds or on any Bonds known by the Trustee to be held by the Borrower or any Affiliate of the Borrower. Any amounts remaining in the Credit Facility Account after making the payment for which the Advance was made pursuant to the Credit Facility shall be immediately refunded to the Credit Provider.

#### **Revenue Fund—Fees Account**

***Deposits into the Fees Account.*** The Trustee shall deposit into the Fees Account all:

- (1) *Third Party Fees.* Payments made by the Borrower under the Financing Agreement attributable to the Third Party Fees;
- (2) *Fees and Expenses.* Payments made by the Borrower under the Financing Agreement attributable to the Fees and Expenses; and
- (3) *Amounts from the Credit Facility.* Amounts derived from the Credit Facility for the payment of the Issuer’s Fee.

***Disbursements from the Fees Account.*** On any date on which any amounts are required to pay any Third Party Fees or any Fees and Expenses, such amounts shall be withdrawn by the Trustee from the Fees Account for payment to the appropriate party, provided, however, that amounts derived from the Credit Facility and deposited into the Fees Account will be used only to pay the Issuer’s Fee when due. In the event the amount in the Fees Account is insufficient to pay such Third Party Fees or any Fees and Expenses, the Trustee shall make written demand on the Borrower for the amount of such insufficiency and, pursuant to the terms of the Financing Agreement, the Borrower shall be liable to promptly pay the amount of such insufficiency to the Trustee within 5 Business Days after the date of the Trustee’s written demand. The Trustee will provide notice of the insufficiency to the Loan Servicer and, prior to the Conversion Date, to the Credit Provider and the Construction Lender.

***No Other Claims to Trust Estate.*** Neither the Tender Agent, the Remarketing Agent nor the Rebate Analyst shall have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited as described in the preceding paragraph into the Fees Account specifically for such Person. Except as otherwise stated in the Indenture, the Issuer shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited as described in the preceding paragraph into the Fees Account specifically for the Issuer. Except as otherwise stated in the Indenture, the Trustee shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited as described in the preceding paragraph into the Fees Account specifically for the Trustee.

### **Costs of Issuance Fund**

***Deposits into the Costs of Issuance Fund.*** On or before the Closing Date the Borrower shall deliver the Costs of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Costs of Issuance Deposit into the Costs of Issuance Deposit Account of the Costs of Issuance Fund. On the Closing Date, the Trustees shall deposit any Net Bond Proceeds received to pay Costs of Issuance into the Net Bond Proceeds Account of the Costs of Issuance Fund.

***Disbursements from the Costs of Issuance Fund.*** The Trustee shall 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. The Trustee may conclusively rely on such requisitions for purposes of making such disbursements. Moneys on deposit in the Costs of Issuance Deposit Account of the Costs of Issuance Fund shall not be part of the Trust Estate and will be used solely to pay Costs of Issuance. Moneys on deposit in the Net Bond Proceeds Account of the Costs of Issuance Fund shall be part of the Trust Estate and shall be used to pay Costs of Issuance.

***Disposition of Remaining Amounts.*** Any moneys remaining in the (i) Costs of Issuance Deposit Account of the Costs of Issuance Fund six months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower and/or (ii) the Net Bond Proceeds Account six months after the Closing Date and not needed to still pay Costs of Issuance shall be transferred to the Loan Fund. Upon final disbursement, the Trustee shall close the Costs of Issuance Fund.

### **Rebate Fund**

The Trustee shall hold and apply the Rebate Fund as provided in the Tax Certificate. Within 30 days after the end of every fifth Bond Year (as defined in the Tax Certificate), and within 55 days after the date on which no Bonds are Outstanding, the Borrower or the Trustee shall cause the Rebate Analyst to deliver to the Trustee and the Issuer a certificate stating whether any rebate payment is required to be made, as set forth in the Tax Certificate, and the Borrower shall deliver to the Trustee any amount so required to be paid.

### **Bond Purchase Fund**

***Deposits Into Bond Purchase Fund.*** The Trustee will deposit each of the following into the Bond Purchase Fund:

- (a) remarketing proceeds received upon the remarketing of Tendered Bonds to any person; and
- (b) Pledged Bond Advances under the Credit Facility to enable the Trustee to pay the purchase price of Tendered Bonds to the extent that moneys obtained pursuant to paragraph (a)

are insufficient on any date to pay the purchase price of Tendered Bonds which amounts the Trustee shall transfer to the Tender Agent on or before 3:00 p.m. Eastern time on each Tender Date.

Subject to the provisions of the Indenture permitting reimbursement of amounts owed to the Credit Provider, moneys in the Bond Purchase Fund shall be held uninvested and exclusively for the payment of the purchase price of Tendered Bonds. Amounts held to pay the purchase price for more than two years will be applied in the same manner as provided under the Indenture with respect to unclaimed payments of principal and interest.

***Disbursements From the Bond Purchase Fund.*** The Trustee will transfer to the Tender Agent on or before 3:00 p.m. Eastern Time on each Tender Date amounts on deposit in the Bond Purchase Fund to pay the purchase price of Tendered Bonds. The Tender Agent shall apply such amounts to pay the purchase price of Bonds purchased under the Indenture to the former owners of such Bonds upon presentation of the Bonds to the Tender Agent pursuant to the provisions of the Indenture.

### **Principal Reserve Fund**

***Deposits Into the Principal Reserve Fund.*** The Trustee will deposit each of the following amounts into the Principal Reserve Fund:

- (a) All of the monthly payments made by the Borrower in accordance with the Schedule of Deposits to Principal Reserve Fund attached to the Reimbursement Agreement, as such schedule may be amended in accordance with the Reimbursement Agreement; and
- (b) Investment Income earned on amounts on deposit in the Principal Reserve Fund.

The Trustee may rely upon the Schedule of Deposits to Principal Reserve Fund attached to the Reimbursement Agreement provided to it as of the Closing Date until it is furnished an amended schedule by the Credit Provider or the Loan Servicer.

***Disbursements From the Principal Reserve Fund.*** The Trustee shall pay or transfer amounts on deposit in the Principal Reserve Fund as follows:

- (a) at the written direction of the Credit Provider, to the Credit Provider to reimburse the Credit Provider for any unreimbursed Advance under the Credit Facility and to pay any other amounts required to be paid by the Borrower under the Loan Documents, the Bond Documents or the Credit Facility Documents (including any amounts required to be paid to the Credit Provider);
- (b) at the written direction of the Credit Provider, with the written consent of the Borrower (so long as an Event of Default has not occurred and is not continuing under any of the Credit Facility Documents), to the Credit Provider or a Borrower, as the Credit Provider elects, to make improvements or repairs to the Mortgaged Property;
- (c) at the written direction of the Credit Provider, if a default has occurred under the Credit Facility Documents, any Loan Document or any Bond Document, to the Credit Provider for any use approved in writing by the General Counsel of the Credit Provider;
- (d) at the written direction of the Credit Provider, if a new mortgage and mortgage note have been substituted for the Security Instrument and the Note in accordance with the Loan

Documents, or if the Borrower otherwise consents, to any purpose approved in writing by the General Counsel of the Credit Provider;

(e) on each Adjustment Date, to the Redemption Account;

(f) during a Weekly Variable Rate Period, on the tenth Business Day prior to each Interest Payment Date, all amounts on deposit in the Principal Reserve Fund (rounded downward to the nearest multiple of \$100,000) in excess of the Principal Reserve Amount, to the Redemption Account to be used to redeem bonds, and

(g) (a) Pay to the Borrower, Investment Income on moneys in the Principal Reserve Fund on the Interest Payment Date following receipt by the Trustee of such interest or profits; provided that there is no deficiency in the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account or the Rebate Fund, and that no default exists under the Credit Facility Documents, any Loan Document or any Bond Document and (b) pay to the Borrower Investment Income or moneys in the Principal Reserve Fund on the Interest Payment Date following delivery of an Alternate Credit Facility, subject to the provisions of the Reimbursement Agreement, including the payment to Fannie Mae of all amounts owed to Fannie Mae under the Reimbursement Agreement and provided that the Fannie Mae Credit Facility shall have been terminated and released by the Trustee, and thereafter pay to the Borrower all amounts on deposit in the Principal Reserve Fund. If a deficiency exists in the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account or the Rebate Fund, the Trustee shall transfer such Investment Income to the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account and/or the Rebate Fund, in that order of priority, prior to any payment to the Borrower.

### **Nonpresentment of Bonds**

In the event any Bond is not presented for payment when the principal of such Bond becomes due, either at maturity or at the date fixed for redemption of such Bond or otherwise, if amounts sufficient to pay such Bond have been deposited with the Trustee for the benefit of the owner of the Bond and have remained unclaimed for two years after such principal has become due and payable, such amounts, to the extent amounts are owed to the Credit Provider as set forth in a written statement of the Credit Provider addressed to the Trustee, will be paid to the Credit Provider, with any excess to be paid to the Borrower. Upon such payment, all liability of the Issuer and the Trustee to the holder of any Bond for the payment of such Bond will cease and be completely discharged, provided, however, that the Trustee, before being required to make any such payment to the Credit Provider or the Borrower, shall cause to be published once in a financial newspaper or journal of general circulation in New York, New York, notice that such moneys remain unclaimed and that, after a date specified in such notice, which will not be less than 30 days from the date of such publication, any unclaimed balance of such moneys then remaining will be paid to the Credit Provider or the Borrower. The cost of such publication will be paid from the unclaimed amount so held by the Trustee. The obligation of the Trustee to pay any such amounts to the Credit Provider or the Borrower will be subject to any provisions of law applicable to the Trustee or to such amounts providing other requirements for disposition of unclaimed property.

### **Investments**

Moneys held as part of any Fund or Account will be invested and reinvested in Permitted Investments. Permitted Investments will have maturities corresponding to, or will be available for withdrawal without penalty no later than, the dates upon which such moneys will be needed for the purpose for which such moneys are held. Moneys on deposit in the (a) Interest Account will be invested

only in investments described in paragraphs (a), (b), (c) and (h) of the definition of Permitted Investments, (b) Redemption Account shall be invested only in investments described in paragraph (a) of the definition of Permitted Investments, with a term not exceeding the earlier of 30 days from the date of investment of such moneys or the date or dates that such moneys are anticipated to be required for redemption, (c) Credit Facility Account and the Bond Purchase Fund will be held uninvested and (d) Costs of Issuance Fund, until disbursed or returned to the Borrower, will be invested only in investments described in paragraph (h) of the definition of Permitted Investments. Permitted Investments will be held by or under the control of the Trustee. All Investment Income from moneys held in all Funds and Accounts other than the Loan Fund, the Rebate Fund, the Costs of Issuance Fund (other than as described below) and the Principal Reserve Fund, upon receipt will be deposited into the Interest Account. Investment Income from moneys held in the Loan Fund, if any, the Rebate Fund, the Costs of Issuance Fund and the Principal Reserve Fund shall remain in the respective Fund where earned.

### **Limitations on Liability**

Notwithstanding any other provision of the Indenture to the contrary:

(a) the obligations of the Issuer with respect to the Bonds are not general obligations of the Issuer but are special, limited obligations of the Issuer payable by the Issuer solely from the Security;

(b) nothing contained in the Bonds or in the Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate;

(c) the Bonds are not and will not be a debt of the State, the Issuer, the Association of Bay Area Governments (“ABAG”) or of any other political subdivision of the State, and none of the State, the Issuer, ABAG or any other political subdivision of the State is or will be liable for the payment of the Bonds;

(d) neither the faith and credit of the Issuer, the State nor of any other political subdivision of the State are pledged to the payment of the principal of and interest and any premium on the Bonds;

(e) no failure of the Issuer to comply with any term, condition, covenant or agreement in the Indenture or in any document executed by the Issuer in connection with the Mortgaged Property, or the issuance, sale and delivery of the Bonds will subject the Issuer to liability for any claim for damages, costs or other charge except to the extent that the same can be paid or recovered from the Trust Estate; and

(f) the Issuer will not be required to advance any moneys derived from any source other than the Trust Estate for any of the purposes of the Indenture, any of the other Bond Documents or any of the Loan Documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of Third Party Fees, Fees and Expenses or administrative expenses or otherwise.

### **Credit Facility; Alternate Credit Facility**

***Acceptance of the Credit Facility.*** The Trustee will hold the Credit Facility and will enforce in its name all rights of the Trustee and all obligations of the Credit Provider under the Credit Facility for the benefit of the Bondholders. The Trustee will not assign or transfer the Credit Facility except to a successor Trustee under the Indenture. The Issuer and the Trustee acknowledge that the obligations of

Fannie Mae as the Credit Provider under the initial Credit Facility are not backed by the full faith and credit of the United States of America, but by the credit of Fannie Mae, a federally chartered, stockholder owned corporation.

***Requests for Advances Under Credit Facility.*** The Trustee shall request Advances under the Credit Facility in accordance with its terms and cause the proceeds of each Advance to be applied so that full and timely payments are made on each date on which payment of principal, interest or purchase price is due on any Bond or any payment of the Issuer's Fee is due and not paid by the Borrower pursuant to the Financing Agreement. The Trustee shall not request, and shall not apply the proceeds of, any Advance to pay (i) principal of, interest on or the purchase price of, any Pledged Bond or any Bond known by the Trustee to be held by the Borrower or any Affiliate of the Borrower, (ii) premium that may be payable upon the redemption of any of the Bonds or (iii) interest that may accrue on any of the Bonds on or after the maturity of such Bond. Prior to requesting an Advance to pay principal of or interest on the Bonds on an Interest Payment Date, the Trustee shall determine the amount necessary to make such payment of principal or interest.

***Return of Payments Under the Credit Facility.*** In the event the Trustee receives an Advance from the Credit Provider on account of any Tendered Bond and thereafter the Trustee receives remarketing proceeds upon the remarketing of such Tendered Bond, then the Trustee shall promptly reimburse the Credit Provider with such funds to the extent of the amount so paid by the Credit Provider as a reimbursement on behalf of the Borrower.

***Alternate Credit Facility.*** Subject to the terms of the Credit Facility Documents, the Trustee shall accept any Alternate Credit Facility delivered to the Trustee in substitution for the Credit Facility then in effect if:

- (a) the Alternate Credit Facility meets the requirements of the Indenture;
- (b) the Substitution Date for the Alternate Credit Facility is an Interest Payment Date during a Weekly Variable Rate Period or an Adjustment Date which immediately follows a Reset Period;
- (c) the Alternate Credit Facility is effective on and from the Substitution Date for such Alternate Credit Facility; and
- (d) the Trustee receives on or prior to the effective date of the Alternate Credit Facility (i) an Opinion of Counsel to the Credit Provider issuing the Alternate Credit Facility, in form and substance satisfactory to the Issuer and the Trustee, relating to the due authorization and issuance of the Alternate Credit Facility and its enforceability and (ii) an opinion of Bond Counsel to the effect that the substitution of such Alternate Credit Facility will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds.

The Trustee shall give notice to the Bondholders by first class mail, postage prepaid, of the substitution by such Alternate Credit Facility for the Credit Facility then in effect as provided in the Indenture. On the Substitution Date, the Trustee shall draw, if necessary, on the Credit Facility being replaced and shall not surrender such Credit Facility until all requests thereon have been honored.

***Extension of Credit Facility.*** In the event the term of any Credit Facility is extended, the Trustee must receive, not later than the Extension Date, the commitment relating to such extension of the Credit Facility; and (ii) only if required by the Rating Agency as a condition to the extension of the Credit

Facility, an Opinion of Counsel for the Credit Provider, in substantially the form of the Opinion of Counsel delivered to the Trustee upon the issuance of such Credit Facility. The Trustee shall provide a copy of the commitment to extend and the extension of the credit facility upon receipt thereof to the Rating Agency and, upon request, to any Bondholder. Upon the failure of the Borrower to furnish the Trustee with either a satisfactory commitment to extend the Credit Facility or an Alternate Credit Facility pursuant to the Indenture and only if applicable, the accompanying Opinion of Counsel on or prior to each Extension Date, the Bonds shall be subject to mandatory tender pursuant to the Indenture.

## **Defeasance**

The Bonds may not be defeased within the meaning of the Indenture if the Bonds are in the Weekly Variable Rate Mode or a Reset Mode.

## **Defaults and Remedies**

*Events of Default.* Each of the following constitutes an Event of Default under the Indenture:

(1) default in the payment when due and payable of any interest due on any Bond (other than a Pledged Bond) or unless the Construction Lender specifies otherwise by written notice to the Trustee, on any Special Purchase Bond;

(2) default in the payment when due and payable of (i) the principal of or any redemption premium on any Bond (other than a Pledged Bond) or unless the Construction Lender specifies otherwise by written notice to the Trustee, on any Special Purchase Bond, at maturity or upon any redemption, or (ii) the purchase price of any Tendered Bond (other than a Pledged Bond);

(3) written notice to the Trustee from the Credit Provider of a default by the Issuer in the observance or performance of any covenant, agreement, warranty or representation on the part of the Issuer included in the Indenture or in the Bonds (other than an Event of Default described in subsection (1) or (2) above) and the continuance of such default for a period of 30 days after the Trustee receives such notice;

(4) written notice to the Trustee from the Credit Provider of an Event of Default under the Reimbursement Agreement;

(5) written notice to the Trustee from the Credit Provider of an Act of Bankruptcy; or

(6) a Wrongful Dishonor.

*Nondefault and Prohibition of Mandatory Redemption Upon Tax Event.* The occurrence of any event (“Tax Event”) which results in the interest payable on the Bonds being includable, for federal income tax purposes, in the gross income of the Bondholders, including any violation of any provision of the Regulatory Agreement or any of the other Bond Documents, shall not (i) directly or indirectly constitute an Event of Default under the Indenture or permit any party (other than the Credit Provider) to accelerate, or require acceleration of, the Loan or the Bonds, unless the Credit Provider provides written notice to the Trustee that such Tax Event constitutes a default under the Reimbursement Agreement, or (ii) give rise to a mandatory redemption of the Bonds, or (iii) give rise to the payment to the Bondholders of any amount, denoted as “supplemental interest,” “additional interest,” “penalty interest,” “liquidated damages,” “damages” or otherwise, in addition to the amounts payable to the owners of the Bonds prior to the occurrence of the Tax Event. Nothing described under this heading will be deemed to amend or

supplement the terms of the Loan Documents. Promptly upon determining that a Tax Event has occurred, the Issuer or the Trustee, by notice in writing to the Construction Lender, the Credit Provider, the Loan Servicer, all Registered Owners of the Bonds and the Remarketing Agent, shall state that a Tax Event has occurred and whether the Tax Event is cured, curable within a reasonable period or incurable. Notwithstanding the availability of the remedy of specific performance to cure a Tax Event that is curable within a reasonable period, neither the Issuer nor the Trustee shall have, upon the occurrence of a Tax Event, any right or obligation to cause or direct acceleration of the Bonds or the Loan, to enforce the Note or to foreclose the Security Instrument, to accept a deed to the Mortgaged Property in lieu of foreclosure, or to effect any other comparable conversion of the Mortgaged Property.

***Acceleration.*** Upon:

(a) the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may, and, upon the written request of Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, must, by written notice to the Issuer, the Borrower, the Credit Provider, the Construction Lender and the Loan Servicer, declare the principal of all Bonds and the interest accrued, and to accrue, on the Bonds to the date of payment immediately due and payable; or

(b) the occurrence of any other Event of Default under the Indenture, the Trustee may, upon receiving the prior written consent of the Credit Provider, prior to the Conversion Date, and must, upon the written direction of the Credit Provider, the Construction Lender, by written notice to the Issuer, the Borrower, the Credit Provider and the Loan Servicer, declare the principal of all Bonds and the interest accrued, and to accrue, on the Bonds to the date of declaration immediately due and payable.

***Redemption and Mandatory Tender.*** Upon the occurrence of an Event of Default described under paragraph (4) under the heading “Events of Default” above:

(1) if the Credit Provider so directs pursuant to the Indenture, the Bonds shall be redeemed in whole or in part in the amount specified by and at the direction of the Credit Provider.

(2) if the Credit Provider so directs pursuant to the Indenture, the Bonds shall be subject to mandatory tender.

Notwithstanding anything to the contrary in the Indenture, if the Credit Provider directs that the Bonds be redeemed in part pursuant to the Indenture, the Credit Provider may further direct on one or more other occasions as described under this subsection that the Bonds be redeemed in whole or in part or that the Bonds be subject to mandatory tender.

***Notice.***

(1) ***Acceleration.*** Upon any decision to accelerate payment of the Bonds, the Trustee will notify the Construction Lender and the Bondholders of the declaration of acceleration, that, in the event of acceleration pursuant to the Indenture, interest on the Bonds will cease to accrue upon such declaration, and payment of the Bonds will be made upon presentment of the Bonds at the Designated Office of the Trustee. Such notice shall be sent by registered mail or overnight delivery service, postage prepaid, or, at the Trustee’s option, may be given by Electronic Means to each Registered Owner of Bonds at such Registered Owner’s last address appearing in the Bond Register. Any defect in or failure to give notice of such declaration will not affect the validity of such declaration.

(2) *Redemption.* Upon the direction of the Credit Provider to redeem the Bonds in whole or in part pursuant the Indenture, immediate notice of redemption will be given.

(3) *Mandatory Tender.* Upon any direction of the Credit Provider that the Bonds be subject to mandatory tender, the Trustee shall give notice to the Bondholders as provided in the Indenture.

***Draw on Credit Facility.*** Immediately upon acceleration, mandatory redemption or mandatory tender of the Bonds, the Trustee shall request an Advance under the Credit Facility in accordance with its terms.

***Other Remedies.*** Upon the occurrence and continuance of an Event of Default, the Trustee may, with or without taking action to accelerate the Bonds, but only with the prior written consent of the Credit Provider, and must at the direction of the Credit Provider if the Event of Default occurs under paragraph (3), (4) or (5) under “Events of Default” above, pursue any of the following remedies:

(a) an action in mandamus or other suit, action or proceeding at law or in equity (i) to enforce the payment of the principal of and interest and any premium on the Bonds then Outstanding, (ii) for the specific performance of any covenant or agreement contained in the Indenture, the Financing Agreement or the Regulatory Agreement or (iii) to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(b) the liquidation of the Trust Estate; or

(c) an action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

Upon the occurrence and continuance of an Event of Default under the Indenture, the Trustee shall exercise such of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, deems most effective to enforce and protect the interests of the Bondholders and, unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider.

***Remedies Not Exclusive.*** No right or remedy conferred upon or reserved to the Trustee (or to the Bondholders) by the Indenture is intended to be exclusive of any other right or remedy, but each and every such right and remedy will be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders under the Indenture or under the Financing Agreement, the Regulatory Agreement or the Credit Facility or now or later existing at law or in equity. No delay or omission to exercise any right or remedy provided in the Indenture will impair any such right or remedy or be construed to be a waiver of any Event of Default or acquiescence in it. Every such right and remedy may be exercised from time to time as often as may be deemed expedient.

***Waiver.*** Subject to the conditions precedent set out below, (a) the Trustee may waive, (b) the Trustee shall waive if directed to do so by the Credit Provider and the Construction Lender in writing, and (c) Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding may waive, by written notice to the Trustee, any Event of Default under the Indenture and its consequences and rescind any declaration of acceleration of maturity of principal. The conditions precedent to any waiver are:

(a) unless waiver is directed by the Credit Provider and the Construction Lender, the Credit Provider and the Construction Lender consent to such waiver in writing;

(b) the principal and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate or rates of interest borne by the Bonds has been paid or provided for by the Borrower in Available Moneys or by the Credit Provider and all fees and expenses of the Trustee have been paid or provided for by the Borrower or the Credit Provider; and

(c) after the waiver, the Credit Facility remains in effect in an amount equal to the aggregate principal amount of the Bonds Outstanding (other than Pledged Bonds) plus the Interest Requirement; provided, however, that such waiver will be permitted without the Credit Facility remaining in effect if (i) the Issuer consents to the waiver, (ii) the Rating Agency then rating the Bonds is notified and the Trustee gives written notice to the Bondholders that the ratings on the Bonds may be reduced or withdrawn upon the occurrence of such waiver, and (iii) 100% of the Bondholders consent to the waiver.

Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes and the Issuer, the Borrower, the Trustee and the Bondholders will be restored to their former positions and rights under the Indenture. No waiver of any default or Event of Default shall extend to or affect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

***Rights of the Credit Provider and the Bondholders To Direct Proceedings.*** Notwithstanding anything contained in the Indenture to the contrary, the Credit Provider itself or Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, but only with the prior written consent of the Credit Provider, shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture or any other proceedings under the Indenture; provided, however, that such direction will not be otherwise than in accordance with the provisions of law and of the Indenture, and provided that the Trustee will be indemnified to its reasonable satisfaction (except as otherwise provided in the Indenture).

***Limitations on Bondholders' Rights.*** No Bondholder has or shall have the right to enforce the provisions of the Indenture or the Financing Agreement, or to institute any proceeding in equity or at law for the enforcement of the Indenture or the Financing Agreement, or to take any action with respect to an Event of Default under the Indenture or an Event of Default under the Financing Agreement, or to institute, appear in or defend any suit or other proceeding with respect to the Indenture or the Financing Agreement upon an Event of Default unless (a) such Event of Default is a Wrongful Dishonor, (b) such Bondholder has given the Trustee, the Issuer, the Credit Provider, the Construction Lender, the Loan Servicer and the Borrower written notice of the Event of Default, (c) the holders of not less than 51% in aggregate principal amount of Bonds then Outstanding have requested the Trustee in writing to institute such proceeding, (d) the Trustee has been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, (e) the Trustee has been offered reasonable indemnity, where required, and (f) the Trustee has thereafter failed or refused to exercise such powers or to institute such proceeding within a reasonable period of time. No Bondholder has or shall have any right in any manner whatever to affect, disturb or prejudice the pledge of revenues or of any other moneys, Funds, Accounts or securities under the Indenture. Except as provided in this paragraph, no Bondholder has or shall have the right, directly or indirectly, individually or as a group, to seek to enforce, collect amounts available under, or otherwise realize on, the Credit Facility.

***Application of Moneys.*** Amounts derived from payments under the Credit Facility shall be deposited into the Credit Facility Account and applied solely to pay the principal of and interest on the Bonds. Amounts on deposit in the Bond Purchase Fund shall be applied solely to pay the purchase price of the bonds. All other moneys received by the Trustee pursuant to any action taken under the Indenture will be deposited into the Interest Account and the Redemption Account, as applicable, after payment of the ordinary costs and expenses of the Trustee. The balance of such moneys, less such amounts as the Trustee determines may be needed for possible use in paying future fees and expenses and for the preservation and management of the Mortgaged Property (as identified by the Credit Provider), shall be applied as described in the following subsections.

***Principal on Bonds Not Declared Due and Payable.*** Unless the principal on all Bonds has become or been declared due and payable, all such moneys will be applied:

FIRST, to the payment of all interest then due on the Bonds, in the order of the maturity of such interest and, if the amount available shall not be sufficient to pay in full said amount, then to the payment ratably, of the amounts due, without any discrimination or privilege;

SECOND, to the payment of the unpaid principal of any of the Bonds which have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the Indenture), in the order of due dates, with interest upon the principal amount of the Bonds from the respective dates upon which they become due at the rate or rates borne by the Bonds, to the extent permitted by law, and, if the amount available shall not be sufficient to pay in full the principal of such Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled to such payment without any discrimination or privilege;

THIRD, to the payment of amounts owed to the Credit Provider under the Credit Facility Documents and the Loan Documents, and then to any amounts due to the Trustee for Extraordinary Items, for this purpose including the costs and expenses of any proceedings resulting in the collection of such moneys and of advances incurred or made by the Trustee.

***Principal on Bonds Declared Due and Payable.*** If the principal of all the Bonds has become or been declared due and payable, all such moneys shall be applied first, to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest to the persons entitled to payment, until all such principal and interest has been paid; second, to pay the Credit Provider amounts owed to it under the Credit Facility Documents and the Loan Documents; and third, to pay the Construction Lender amounts owed to it under the Construction Phase Credit Documents as specified by the Construction Lender to the Trustee in writing, and fourth, to any other amounts due and payable under the Indenture.

## **Trustee**

***Resignation of Trustee.*** The Trustee may resign only upon giving 60 days' prior written notice to the Issuer, the Credit Provider, the Construction Lender, the Loan Servicer, the Borrower, and to each Registered Owner of Bonds then Outstanding as shown on the Bond Register. Notwithstanding such notice, such resignation shall take effect only upon the appointment of a successor Trustee in accordance with the Indenture and the acceptance of such appointment by such successor Trustee.

***Removal of Trustee.*** The Trustee may be removed at any time, upon 30 days' prior written notice to the Trustee, (a) by the Issuer with the written consent of the Credit Provider, (b) by the owners of not less than 51% in aggregate principal amount of Bonds then Outstanding, which written instrument shall designate a successor Trustee approved by the Construction Lender and the Credit Provider or (c) by the Credit Provider. Such removal shall not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment.

***Appointment of Successor Trustee.*** Upon the resignation or removal of the Trustee, a successor Trustee, satisfying the requirements of the Indenture, shall be appointed by the Issuer (unless appointed by the Bondholders as provided in the Indenture). If, in the case of resignation or removal of the Trustee, no successor is appointed within 30 days after the notice of resignation or within 30 days after removal, as the case may be, then, in the case of a resignation, the resigning Trustee shall appoint a successor with the prior written consent of the Issuer, the Borrower, the Construction Lender and the Credit Provider or apply to a court of competent jurisdiction for the appointment of a successor Trustee and, in the case of a removal, the Credit Provider shall have the right to appoint a successor Trustee or to apply to a court of competent jurisdiction for the appointment of a successor Trustee. The successor Trustee must accept in writing its duties and responsibilities under the Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement. The successor Trustee shall give notice of such succession by first-class mail, postage prepaid, to each Bondholder, the Issuer, the Construction Lender, the Credit Provider, the Loan Servicer and the Borrower.

***Qualifications of Trustee.*** The Trustee and any successor Trustee will at all times be a bank or trust company organized under the laws of the United States of America or any state, authorized under such laws to exercise corporate trust powers, having a combined capital stock, surplus and undivided profits of at least \$50,000,000 (or an affiliate of a corporation or banking association meeting that requirement which guarantees the obligations and liabilities of the Trustee) and subject to supervision or examination by federal or state banking authority.

## **Supplemental Indentures; Amendments**

***Supplemental Indentures Not Requiring Bondholder Consent.*** The Issuer and the Trustee, without the consent of or notice to any Bondholder, may enter into an indenture or indentures supplemental to the Indenture for one or more of the purposes set forth below:

- (a) to cure any ambiguity or to correct or supplement any provision contained in the Indenture or in any supplemental indenture which may be defective or inconsistent with any other provision contained in the Indenture or in any supplemental indenture;
- (b) to amend, modify or supplement the Indenture in any respect if such amendment, modification or supplement is not materially adverse to the interests of the Bondholders;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to grant or pledge to the Trustee for the benefit of the Bondholders any additional security other than that granted or pledged under the Indenture;
- (d) to modify, amend or supplement the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute then in effect, or to permit the qualification of the Bonds for sale under the securities laws of any of the States of the United States;

(e) to appoint a successor trustee, separate trustee or co trustee, or a separate Tender Agent or Bond Registrar;

(f) to make any change requested by the Credit Provider which is not materially adverse to the interests of the Bondholders, including, but not limited to, provision of a Credit Facility other than or in substitution for the initial Credit Facility, provided that the provision of such other Credit Facility does not adversely affect the rating then in effect for the Bonds;

(g) to make any changes in the Indenture or in the terms of the Bonds necessary or desirable in order to maintain the then existing rating awarded to the Bonds by the Rating Agency or otherwise to comply with requirements of any Rating Agency then rating the Bonds;

(h) to comply with the Code and the regulations and rulings issued with respect to the Code, to the extent determined as necessary in the Opinion of Bond Counsel;

(i) to modify, alter, amend or supplement the Indenture in any other respect, including amendments which would otherwise be described in “Supplemental Indentures Requiring Bondholder Consent” below, (A) if such amendments will take effect on a Mandatory Tender Date following the purchase of Tendered Bonds or (B) if notice of the proposed supplemental indenture is given to Bondholders (in the same manner as notices of redemption are given) at least 30 days before the effective date of such amendment, modification, alteration or supplement and, on or before such effective date, the Bondholders have the right to demand purchase of their Bonds pursuant to the Indenture; or

(j) to change any of the time periods for provision of notice relating to the remarketing of Bonds or the determination of the interest rate on the Bonds.

***Supplemental Indentures Requiring Bondholder Consent.*** Exclusive of supplemental indentures described in the preceding paragraph and subject to the terms and provisions contained in this paragraph, the Issuer and the Trustee may, with the consent of Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, from time to time, execute indentures supplemental to the Indenture for the purpose of modifying or amending any of the provisions contained in the Indenture; provided, however, that nothing in this paragraph permits, or will be construed as permitting:

(a) an extension of the maturity of the principal of or interest on, or the mandatory redemption date of, any Bond, without the consent of the owner of such Bond;

(b) a reduction in the principal amount of, or the rate of interest on, any Bond, without the consent of the Owner of such Bond;

(c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, without the consent of the Owners of all such Bonds;

(d) the creation of a lien prior to or on parity with the lien of the Indenture, without the consent of the Owners of all of the Bonds then Outstanding;

(e) a change in the percentage of Bondholders necessary to waive an Event of Default under the Indenture or otherwise approve matters requiring Bondholder approval under the Indenture, including consent to any supplemental indenture, without the consent of the Owners of all the Bonds then Outstanding;

(f) a transfer, assignment or release of the Credit Facility (or modification of the provisions of the Indenture governing such transfer, assignment or release), other than as permitted by the Indenture, the Assignment or the Credit Facility, without the consent of the Owners of all of the Bonds then Outstanding;

(g) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, without the consent of the Owners of all of the Bonds then Outstanding;

(h) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding under the Indenture, without the consent of the Owners of all of the Bonds then Outstanding; or

(i) the amendment of the provisions of the Indenture relating to the amendment thereof, without the consent of the Owners of all of the Bonds then Outstanding.

***No Bondholder Consent Required for Amendment to Loan Documents.*** Unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider alone (with the concurrence of the Construction Lender, unless the change is required by law or will only take effect from or after the Conversion Date, in which case no concurrence of the Construction Lender shall be required) may consent to any amendment to the Loan Documents and no consent of the Bondholders is required; provided, however, that any amendment or substitution of the Note shall occur only following written confirmation of the Rating Agency that such amendment or substitution will not result in a reduction or withdrawal of the rating on the Bonds.

***Amendments to the Credit Facility.*** The Credit Facility may only be amended, supplemented or otherwise changed in accordance with the following:

(a) ***Replacement Credit Facility.*** At the request of the Credit Provider, the Trustee shall exchange the Credit Facility with the Credit Provider for a new Credit Facility (a “Replacement Credit Facility”) issued by the Credit Provider, provided that there is delivered to the Trustee (i) a written confirmation from the Rating Agency to the effect that such exchange shall not adversely affect the rating then in effect for the Bonds and (ii) a written opinion of Bond Counsel to the effect that such exchange will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. No such exchange shall require the approval of the Issuer, the Trustee or any of the Bondholders or constitute or require a modification or supplement to the Indenture.

(b) ***Amendment of the Credit Facility.*** The Trustee may consent, without the consent of the owners of the Bonds, to any amendment of the Credit Facility not addressed in subsection (a) which does not prejudice in any material respect the interests of the Bondholders.

(c) ***Other Amendments of the Credit Facility.*** Except as provided in subsections (a) and (b), the Credit Facility may be amended only with the consent of the Trustee and the owners of a majority of the owners of all Outstanding Bonds. No amendment may be made to the Credit Facility which would reduce the amounts required to be paid under the Credit Facility or change the time for payment of such amounts; provided, however, that any such amounts may be reduced without such consent solely to the extent that such reduction represents a reduction in any fees payable from such amounts.

***Notice to and Consent of Bondholders.*** If consent of the Bondholders is required for any supplement, amendment or modification to the Indenture or for any other similar purpose, the Trustee shall give notice of the proposed supplement, amendment or modification by first class mail, postage prepaid, to the Bondholders. Such notice will be conclusively presumed to have been duly given and received when given in such manner, whether or not any holder actually receives the notice. Such notice shall briefly set forth the nature of the proposed supplement, amendment or modification, and shall state that copies of any such supplement, amendment or modification are on file at the Designated Office of the Trustee for inspection by the Bondholders. The consent of the holder of any Bond will be binding on any transferee and successor transferees of such Bond.

***Required Approvals.*** Subject to the provisions of the Indenture, no amendment, supplement or modification may be made (i) to any Bond Document without the prior written consent of the Construction Lender and the Credit Provider, (ii) to any Loan Document without the prior written consent of the Credit Provider and, so long as the change will take effect prior to the Conversion Date or is not required by law, the Construction Lender, or (iii) to any Credit Facility Document without the prior written consent of the Credit Provider and, if the change will materially adversely affect the Borrower or the Construction Lender, the Construction Lender. Anything in the Indenture to the contrary notwithstanding, a supplement or amendment or other document which materially and adversely affects any rights or obligations of the Borrower will not become effective unless and until the Borrower (if the Borrower is not then in default under any Bond Document or any Loan Document and if no event which, with notice or the passage of time or both, would constitute such a default has occurred and is continuing) has consented in writing to the execution of such supplemental indenture, amendment or other document. The Trustee shall not be required to enter into any supplement or amendment which adversely affects the Trustee's rights and duties under the Indenture. Anything in the Indenture to the contrary notwithstanding, a supplement or amendment or other document described under this section which materially and adversely affects any rights or obligations of the Remarketing Agent shall not become effective unless and until the Remarketing Agent (if the Remarketing Agent is not then in default under any Bond Document or Loan Document and if no event which, with notice or the passage of time or both, would constitute such a default has occurred and is continuing) has consented in writing to the execution of such supplemental indenture, amendment or other document.

***Opinions of Counsel.*** The Trustee may obtain and will be fully protected in relying upon an Opinion of Counsel as conclusive evidence that any supplement or amendment to the Indenture is authorized and permitted by the Indenture and, if applicable, is not materially adverse to the interests of the Bondholders. No supplement or amendment with respect to the Indenture shall be effective until the Issuer and the Trustee shall have received an Opinion of Bond Counsel to the effect that such supplement or amendment will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds.

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT

*The following is a brief summary of certain provisions of the Financing Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Financing Agreement, a copy of which is on file with the Trustee.*

#### **Amount and Source of Loan**

The Issuer has authorized the issuance of the Bonds in the Principal Amount. The Issuer has agreed to make the Loan in the Principal Amount to the Borrower with the Net Bond Proceeds. Upon the issuance and delivery of the Bonds, the Issuer will deliver or cause to be delivered the Net Bond Proceeds to the Trustee. The Loan shall be deemed made in full upon deposit by the Trustee of the Net Bond Proceeds into the Loan Fund. The Borrower has accepted the Loan from the Issuer upon the terms and conditions set forth in the Financing Agreement and the Loan Documents, subject to the Indenture, the Regulatory Agreement and the Assignment. Disbursements will be made from the Loan Fund as provided in the Indenture. The Borrower has agreed to apply the proceeds of the Loan to pay the costs of the acquisition, construction, equipping and permanent financing for the Mortgaged Property.

#### **Credit Facility**

The Borrower has agreed to cause credit enhancement for the Loan or the Bonds and liquidity support for the Bonds to be in effect in the amounts and during the periods as required by the Indenture. From time to time, the Borrower may arrange for the delivery to the Trustee of one or more Alternate Credit Facilities meeting the requirements of the Indenture in substitution for the Credit Facility then in effect.

#### **Payment of Fees, Costs and Expenses**

The Borrower shall pay when due, without duplication, the fees, expenses and other sums described below.

(a) ***Fees Due at Closing.*** The Borrower shall pay or provide for the payment of all Costs of Issuance and the Trustee's acceptance fee, if any, on the Closing Date.

(b) ***Third Party Fees.*** The Borrower shall pay the Third Party Fees on a monthly basis. Each monthly payment shall be in an amount equal to the aggregate of all of the Third Party Fees prorated monthly so that the Trustee shall have the full amount of each fee available in the Fees Account to pay each Third Party Fee as it falls due without regard to whether any Third Party Fee is payable monthly, annually or on any other periodic basis. The Third Party Fees are as follows:

- (1) The Issuer's Fee in the amount set forth in the Financing Agreement.
- (2) The annual continuing trust administration fee of the Trustee in the amount set forth in the Financing Agreement payable by the Borrower on the dates set forth in the Financing Agreement.
- (3) The fees of the Remarketing Agent for its remarketing services.

(4) The annual continuing fee of the Rebate Analyst for its rebate calculation services.

(c) ***Fees and Expenses.***

(1) The annual rating maintenance fee of each Rating Agency.

(2) The Extraordinary Items.

(3) All advances, out-of-pocket expenses, costs and other charges of each of the Issuer, the Rebate Analyst, the Remarketing Agent, the Tender Agent and the Trustee incurred from time to time, but only to the extent that any such amounts are payable by the Borrower pursuant to an agreement between the Borrower and such Person regarding its services in connection with the Bonds or the Loan.

(4) All costs of registering, printing, reprinting, preparing and delivering any replacement bonds required under the Indenture and in connection with the registration, printing, reprinting or transfer of Bonds.

(5) All fees, costs and expenses of any change in Mode or of any tender, purchase, remarketing or reoffering of any Bonds. The fees, costs and expenses of any tender, purchase, remarketing or reoffering of Bonds must be paid by the Borrower in advance in accordance with the Remarketing Agreement or other agreement relating to the remarketing or reoffering of the Bonds.

(6) All fees, costs and expenses in connection with Conversion.

The Borrower has agreed to timely honor any demand for payment by the Trustee pursuant to the Indenture on account of any insufficiency in the Fees Account.

**Borrower's Obligations Upon Tender of Bonds**

If any Tendered Bond is not remarketed on any Tender Date and a sufficient amount is not available in the Bond Purchase Fund for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee pursuant to the Credit Facility or otherwise pay by the applicable times provided in the Indenture, an amount equal to the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Tender Date.

**Obligation of the Borrower to Pay Deficiencies**

The Borrower shall pay any deficiency resulting from any loss due to a default under any investment in any Fund or Account or a change in value of any investment.

**Obligations of the Borrower Unconditional**

To the fullest extent permitted by law, the obligations of the Borrower to make all payments and perform its other obligations under the Financing Agreement shall be absolute, unconditional and irrevocable, shall be paid and performed strictly in accordance with the applicable Transaction Documents under all circumstances, including, without limitation, the following circumstances: (i) any invalidity or unenforceability of the Credit Facility or any of the other Transaction Documents; (ii) any amendment or waiver of, or any consent to departure from, the terms of the Credit Facility or any of the

other Transaction Documents, any extension of time or other modification of the terms and conditions for any act to be performed in connection with the Credit Facility or any of the other Transaction Documents; (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer, the Trustee, the Tender Agent, the Credit Provider, the Loan Servicer, the Remarketing Agent or any other Person, whether in connection with any of the Transaction Documents, the Mortgaged Property, or any unrelated transaction; (iv) the surrender or impairment of any security for the performance or observance of any of the agreements or terms of any of the Transaction Documents; (v) defect in title to the Mortgaged Property, any act or circumstance that may constitute failure of consideration, destruction of, damage to or condemnation of the Mortgaged Property, commercial frustration of purpose, or any change in the tax or other laws of the United States of America or of the State or any political subdivision of either; (vi) the breach by the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, the Credit Provider, the Loan Servicer or any other Person of any of its obligations under any Transaction Document; or (vii) any other circumstance, happening or omission whatsoever, whether or not similar to any of the foregoing.

### **Personal Liability of Borrower**

Except as provided in the last sentence under this heading, the obligations of the Borrower under the Financing Agreement and the obligations of the Borrower under the Regulatory Agreement to pay money, including the obligations of the Borrower with respect to the Reserved Rights, shall be (i) general obligations of the Borrower with recourse to the Borrower personally, and (ii) subordinate and junior in priority, right of payment and all other respects to any and all obligations of the Borrower under the Loan Documents and to the Credit Provider under or in respect of the Credit Facility Documents. Nothing described under this heading shall apply to the obligations of the Borrower under any of the Loan Documents.

### **Obligations Unsecured**

All obligations of the Borrower under the Financing Agreement and under the Regulatory Agreement, including the obligations of the Borrower with respect to the Reserved Rights, shall not be secured by the Security Instrument and shall not constitute a lien on the Mortgaged Property in any manner.

### **Certain Obligations Personal to the Borrower**

No subsequent owner of the Mortgaged Property (including the Credit Provider as a result of a foreclosure, a deed in lieu of foreclosure or comparable conversion of the Loan) shall be liable for any breach or default of any obligation of any prior owner under the Regulatory Agreement or the Financing Agreement, including any payment or indemnification obligation. The owner of the Mortgaged Property at the time any default or breach occurs shall remain liable for any and all damages occasioned by such default or breach even after such Person ceases to be the owner. Upon seeking to collect such damages, neither the Issuer nor the Trustee shall have recourse against or the right to levy against or otherwise collect on any judgment from the Mortgaged Property.

### **Sufficiency of Bond Proceeds**

THE ISSUER DOES NOT MAKE ANY WARRANTY, EITHER EXPRESS OR IMPLIED, THAT MONEYS, IF ANY, WHICH WILL BE PAID INTO THE LOAN FUND OR OTHERWISE MADE AVAILABLE TO THE BORROWER WILL BE SUFFICIENT TO COMPLETE THE MORTGAGED PROPERTY, AND THE ISSUER SHALL NOT BE LIABLE TO THE BORROWER,

THE BONDHOLDERS OR ANY OTHER PERSON IF FOR ANY REASON THE MORTGAGED PROPERTY IS NOT COMPLETED.

### **Indemnification**

The Borrower has released the Issuer, the Trustee, the Tender Agent and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer, the Trustee or the Tender Agent within the meaning of the Securities Act of 1933, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Tender Agent and their respective officers, directors, employees, agents, members of its governing body, officials and any person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an "Indemnified Party") from and against, any and all losses, claims, damages, liabilities and expenses (including attorneys' fees and expenses), taxes, causes of action, suits and judgments of any nature, joint or several, by or on behalf of any person arising out of:

- (a) the approval of financing for the Mortgaged Property or the making of the Loan;
- (b) the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made in writing by any person other than the party seeking indemnification in connection therewith, including, but not limited to, any (i) statement or information made by the Borrower with respect to the Borrower or the Mortgaged Property in any offering document or materials regarding the Bonds, the Mortgaged Property or the Borrower or in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (ii) untrue statement or alleged untrue statement of a material fact contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (iii) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold;
- (c) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Loan Documents or any other documents relating to the Mortgaged Property or the Bonds or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;
- (d) the Borrower's failure to comply with any requirement of this Agreement or the Regulatory Agreement;
- (e) the condition of the Mortgaged Property (environmental or otherwise), including any violation of any law, ordinance, court order or regulation affecting the Mortgaged Property or any part of it;
- (f) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Mortgaged Property or arising out of any action or inaction of the Borrower or any of its agents, servants, employees or licensees, whether or not related to the Mortgaged Property, or resulting from the acquisition, construction, design, rehabilitation, repair, operation, use or management of all or any part of the Mortgaged Property;

(g) the Trustee's acceptance or administration of the trusts created by, and the exercise of its powers or duties under, the Indenture or under this Agreement, the Regulatory Agreement, the Credit Facility or any other agreements in connection with such agreements to which it is a party; and

(h) to the extent not mentioned in any of the preceding subsections, any cause whatsoever in connection with transactions provided for in the Financing Agreement and the other Transaction Documents or otherwise in connection with the Mortgaged Property, the Bonds or the execution or amendment of any document relating to the Bonds or the Mortgaged Property.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, to the extent such damages are caused by the negligence or willful misconduct of such Person, and (ii) in the case of the foregoing indemnification of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the willful misconduct of such Person.

### **Events of Default**

The occurrence of any one or more of the following events shall constitute an Event of Default under the Financing Agreement:

(a) The Borrower fails to pay when due any amount payable by the Borrower under the Financing Agreement.

(b) The Borrower fails to observe or perform any covenant or obligation in the Financing Agreement on its part to be observed or performed for a period of 30 days after receipt of written notice from the Issuer specifying such failure and requesting that it be remedied; provided, however, that if the failure cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the validity or enforceability of the Bonds or on the exclusion from gross income, for federal income tax purposes, of the interest on the Bonds, and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure is cured within 90 days of receipt of notice of such failure.

(c) The Credit Provider provides written notice to the Trustee of an Event of Default under the Financing Agreement by reason of the occurrence of an Event of Default under the Reimbursement Agreement. No Event of Default under the Reimbursement Agreement shall constitute a default under the Financing Agreement unless specifically declared to be so by the Credit Provider. The Credit Provider shall make such declaration by written notice to the Trustee.

### **Remedies Upon an Event of Default**

Subject to the Assignment, whenever any Event of Default occurs and is continuing under the Financing Agreement, the Issuer may take one or any combination of the following remedial steps:

(a) by written notice to the Borrower, declare all amounts then due and payable on the Note to be immediately due and payable;

(b) exercise any of the rights and remedies provided in the Loan Documents; and

(c) take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and afterward to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Financing Agreement.

#### **No Levy or Other Execution Against Project**

Neither the Issuer nor the Trustee shall have any right to levy, execute or enforce any judgment in respect of the Borrower's obligations under the Financing Agreement, including the Reserved Rights, against the Project or any other property of the Borrower which secures the obligations of the Borrower under the Loan or to the Credit Provider under any of the Credit Facility Documents.

#### **Amendment**

No amendment to the Financing Agreement shall be binding upon the parties to the Financing Agreement until such amendment is reduced to writing and executed by such parties; provided, however, that no amendment, supplement or other modification to the Financing Agreement or any other Bond Document shall be effective without the prior written consent of the Credit Provider, subject to the provisions of the Financing Agreement.

**APPENDIX D**

**FORM OF CREDIT FACILITY**

**DIRECT PAY  
IRREVOCABLE TRANSFERABLE  
CREDIT ENHANCEMENT INSTRUMENT**

(Geneva Pointe Apartments)

March 31, 2004

Wells Fargo Bank, National Association,  
as Trustee  
San Francisco, California 94111

At the request of Geneva Elk Grove L.P. (“**Borrower**”), Fannie Mae (“**Fannie Mae**”) issues this direct pay irrevocable, transferable Credit Enhancement Instrument to Wells Fargo Bank, National Association (“**Trustee**”), not in its individual or corporate capacity but solely as Trustee for the owners of \$13,070,000 aggregate principal amount of the ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A (“**Bonds**”), issued pursuant to the Trust Indenture (“**Indenture**”), dated as of March 1, 2004, between the ABAG Finance Authority for Nonprofit Corporations (“**Issuer**”) and the Trustee.

**1. Definitions.** Capitalized terms used in this Credit Enhancement Instrument have the meanings given to those terms in this Section 1 or elsewhere in this Credit Enhancement Instrument or in the Indenture.

“**Advance**” means a Principal Advance, Interest Advance, Pledged Bonds Advance or Issuer’s Fee Advance, as such terms are defined in Section 3.

“**Affiliate**” as applied to any person, means any other person directly or indirectly controlling, controlled by, or under common control with, that person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

“**Amount Available**” has the meaning given that term in Section 2.

“**Business Day**” means any day other than:

- (a) a Saturday or a Sunday;
- (b) any day on which banking institutions located in the City of New York, New York are required or authorized by law or executive order to close;

(c) any day on which banking institutions located in the city or cities in which the Designated Office (as that term is defined in the Indenture) of the Trustee, the Remarketing Agent or the Loan Servicer is located are required or authorized by law or executive order to close;

(d) prior to the date upon which the interest rate on the Bonds adjusts to a fixed rate mode, a day on which the New York Stock Exchange is closed; or

(e) any day on which Fannie Mae is closed.

“**Certificate**” means any certificate in the form attached to this Credit Enhancement Instrument as an Exhibit or such other form as provided in Section 3. If the certificate is submitted to Fannie Mae by personal delivery or by telecopy, the certificate must be signed by one who purports to be an authorized officer of the Trustee. If the certificate is submitted to Fannie Mae in any other medium (such as e-mail or a web based medium), the certificate must be authenticated as provided in the related Presentation Protocol.

“**Credit Enhancement Instrument**” means this Direct Pay Irrevocable Transferable Credit Enhancement Instrument, as the same may be amended, supplemented or restated from time to time.

“**Excluded Bond**” means any Bond which is not Outstanding (as that term is defined in the Indenture), any Bond registered in the name of or otherwise owned, directly or indirectly, by the Borrower or any Affiliate of the Borrower or any Pledged Bond.

“**Expiration Date**” means the Expiration Date stated in Section 7.

“**Interest Portion**” has the meaning given that term in Section 2.

“**Issuer’s Fee**” means the Issuer’s annual fee of 2 basis points multiplied by the then-outstanding principal balance of the Bonds plus \$4,000 payable annually by the Borrower under the Financing Agreement and pursuant to the provisions of the Regulatory Agreement.

“**Issuer’s Fee Portion**” has the meaning given that term in Section 2.

“**Loan**” means the mortgage loan made by the Issuer to the Borrower pursuant to the Financing Agreement for the purpose of providing funds to the Borrower to finance the acquisition, construction and equipping of the property financed by the Loan.

“**Loan Servicer**” means initially GMAC Commercial Mortgage Corporation or any other entity approved by Fannie Mae in its discretion as the servicer of the Loan, and any permitted successors or assigns.

“**Note**” means the Multifamily Note (together with all addenda thereto) dated as of March 1, 2004, executed by the Borrower in favor of the Issuer, as the same may be amended, supplemented or restated from time to time or any mortgage note executed in substitution therefor in accordance with the terms of the Bond Documents, as such substitute note may be amended, supplemented or restated from time to time.

“**Pledged Bond**” means any Bond during the period from and including the date of its purchase by the Trustee on behalf of and as agent for the Borrower with the proceeds of an Advance under this Credit Enhancement Instrument, to, but excluding, the date on which the Pledged Bonds Advance made

by the Credit Provider on account of such Pledged Bond is reinstated under this Credit Enhancement Instrument or the Pledged Bond is cancelled.

“**Presentation Protocol**” means an agreement between Fannie Mae and the Trustee regarding one or more media through which the Trustee may present Certificates to Fannie Mae under this Credit Enhancement Instrument, as such agreement may be amended, supplemented or restated from time to time.

“**Principal Portion**” has the meaning given that term in Section 2.

“**Reimbursement Agreement**” means the Reimbursement Agreement, dated as of March 1, 2004, between Fannie Mae and the Borrower, as such agreement may be amended, supplemented or restated from time to time.

“**Remarketing Agent**” means the remarketing agent under the Indenture.

“**Reset Rate**” means the rate of interest borne by the Bonds for a period of ten or more years (or such shorter period as consented to by Fannie Mae) as determined in accordance with the Indenture.

“**Tender Agent**” means the tender agent under the Indenture.

“**Termination Date**” means, subject to Section 7(d), the date on which this Credit Enhancement Instrument terminates in accordance with Section 7(b).

“**Trustee**” means Wells Fargo Bank, National Association, a national banking association duly organized and existing under the laws of the United States of America, not in its individual or corporate capacity, but solely as trustee under the Indenture, or any permitted successor trustee under the Indenture.

**2. Amount Available.** Subject to the terms and conditions of this Credit Enhancement Instrument, Fannie Mae irrevocably authorizes the Trustee to draw on Fannie Mae, from time to time, from and after the date of this Credit Enhancement Instrument to, and including, the earlier of the Expiration Date or the Termination Date, a maximum aggregate amount not exceeding \$13,222,712 (as such amount may be reduced or reinstated from time to time in accordance with Section 8, “**Amount Available**”), of which:

(a) up to \$13,070,000.00 (“**Principal Portion**”) may be drawn with respect to the unpaid principal of the Bonds or, as the case may be, the principal portion of the purchase price of the Bonds;

(b) up to \$146,098 (“**Interest Portion**”), or 34 days interest on the Bonds (calculated at an assumed rate on the Bonds of 12% per annum on the basis of a year of 365 days), may be drawn with respect to interest actually accrued on the Bonds or, as the case may be, the interest portion of the purchase price of the Bonds; and

(c) up to \$6,614.00 (“**Issuer’s Fee Portion**”) may be drawn with respect to the Issuer’s Fee.

**3. Advances.** Each demand for an Advance shall be made by the Trustee’s presentation to Fannie Mae of a Certificate:

(a) in the form of Exhibit A to pay principal of the Bonds (other than Excluded Bonds) due as a result of the acceleration, defeasance, redemption or stated maturity thereof (“**Principal Advance**”);

(b) in the form of Exhibit B to pay interest on the Bonds (other than Excluded Bonds) on or prior to their stated maturity date (“**Interest Advance**”);

(c) in the form of Exhibit C to pay principal of, plus accrued interest on, Bonds tendered for purchase pursuant to the Indenture (“**Pledged Bonds Advance**”); and

(d) in the form of Exhibit D to pay the Issuer’s Fee if not paid when due (“**Issuer’s Fee Advance**”).

Any Certificate submitted to Fannie Mae by the Trustee shall have all blanks appropriately completed and shall be signed by one who states therein that he or she is an authorized officer of the Trustee. Fannie Mae’s obligation to honor any demand for an Issuer’s Fee Advance is a standby obligation, payable if the Issuer’s Fee is not otherwise paid, and Fannie Mae’s obligation to honor any demand for all other Advances is a direct pay obligation, without regard to whether the Borrower has made any such payment.

Neither demands for, nor Advances, may be made under this Credit Enhancement Instrument to pay (i) principal of, interest on or the purchase price of, any Excluded Bond, (ii) premium that may be payable upon the redemption of any of the Bonds or (iii) interest that may accrue on any of the Bonds on or after the maturity of such Bond.

Fannie Mae may amend the form of any Certificate or delete any of the information, statements and certifications set out in the form of any Certificate to accommodate the sending of such Certificate by a medium pursuant to a Presentment Protocol. No such amendment may (i) require any additional information, statement or certification than that required by such form of certificate attached to this Credit Enhancement Instrument on the date of issuance, (ii) modify the timing for the presentation of such Certificate, and the payment thereof or (iii) require personal delivery with respect to the presentation of any Certificate with respect to which payment is to be made on the same Business Day.

**4. Presentation of Certificates.** Each Certificate must be given to Fannie Mae by:

(a) personal delivery at 3900 Wisconsin Avenue, Washington, D.C. 20016, Attention: Vice President, Multifamily Asset Management; or

(b) telecopy to phone number 202-752-8369, immediately followed by telephonic notice to the Vice President, Multifamily Operations at telephone number 301-204-8422; or

(c) such other medium as Fannie Mae and the Trustee may agree in a Presentation Protocol from time to time.

A Presentation Protocol may provide that the Trustee may not submit a Certificate by telecopy after a stated date or may only submit Certificates by telecopy after a certain date with the prior written permission of Fannie Mae, in which case subsection (b) shall be automatically deemed amended to that effect.

Fannie Mae will notify the Trustee in writing of any change in address or telecopy number to which all Certificates must be delivered or of any change relating to the person to be called for telephonic notices confirming telecopy communications. Any such written notice shall be effective upon receipt by the Trustee.

**5. Fannie Mae’s Engagement.** Upon due receipt by Fannie Mae of a Certificate conforming to the terms and conditions of this Credit Enhancement Instrument, Fannie Mae will honor payment of the

amount specified in such Certificate if presented as specified below on or before the earlier of the Expiration Date or the Termination Date:

(a) If a presentation in respect of a Principal Advance, Interest Advance or Pledged Bonds Advance relating to a mandatory tender pursuant to Section 4.2(b) of the Indenture is made:

(i) at or prior to 12:00 noon Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:00 p.m. Eastern time on the next following Business Day;

(ii) after 12:00 noon Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:00 p.m. Eastern time on the second following Business Day.

(b) If a presentation in respect of a Pledged Bonds Advance (other than a Pledged Bonds Advance relating to a mandatory tender pursuant to Section 4.2(b) of the Indenture) is made:

(i) at or prior to 10:30 a.m. Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:30 p.m. Eastern time on the same Business Day;

(ii) after 10:30 a.m. Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:30 p.m. Eastern time on the next following Business Day.

(c) If a presentation in respect of an Issuer's Fee Advance is made:

(i) at or prior to 5:00 p.m. Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:00 p.m. Eastern time on the fifth Business Day following such presentation;

(ii) after 5:00 p.m. Eastern time on a Business Day, payment shall be made to the Trustee of the amount specified no later than 1:00 p.m. Eastern time on the sixth Business Day following such presentation.

All Advances made under this Credit Enhancement Instrument will be made with Fannie Mae's own funds in immediately available funds.

**6. Nonconforming Tender.** If a demand for payment under this Credit Enhancement Instrument made by the Trustee does not conform to the terms and conditions of this Credit Enhancement Instrument, Fannie Mae will notify the Trustee of such lack of conformity within a reasonable time after delivery of such demand for payment, such notice to be promptly confirmed in writing to the Trustee, and Fannie Mae shall hold all documents at the Trustee's disposal or, at the Trustee's option, return the same to the Trustee.

**7. Expiration and Termination.**

(a) **Expiration.** This Credit Enhancement Instrument shall expire at 4:00 p.m. Eastern time on March 20, 2037 ("**Expiration Date**").

(b) **Termination Before Expiration Date.** This Credit Enhancement Instrument shall automatically terminate prior to the Expiration Date on the first to occur of: (i) the honoring by Fannie Mae of an Advance which automatically and permanently reduces the Principal Portion to zero, (ii) 4:00 p.m. Eastern time on the day following the last day of any period during which the Bonds bear interest at a Reset Rate unless Fannie Mae has notified the Trustee prior to such date that it elects to waive such termination, and (iii) Fannie Mae's receipt of a Certificate in the form of Exhibit G (which shall be conclusive evidence of the matters set forth therein). The date determined in the preceding sentence is the "**Termination Date.**"

(c) **Delivery.** Upon the Expiration Date or the Termination Date, whichever first occurs, this Credit Enhancement Instrument shall be delivered to Fannie Mae for cancellation.

(d) **Business Day Convention.** In the event that any date on which this Credit Enhancement Instrument would otherwise expire or terminate is not a Business Day, this Credit Enhancement Instrument shall continue in effect and shall not expire or terminate until 4:00 p.m. Eastern time on the next Business Day.

**8. Reduction and Reinstatement of Amount Available.** The Amount Available shall be reduced or reinstated from time to time in accordance with this Section.

(a) **Automatic Reduction on Making any Advance.** The Amount Available shall be reduced automatically by the amount of each Advance paid by Fannie Mae, notwithstanding any act or omission, whether authorized or unauthorized, of the Trustee or any officer, director, employee or agent of the Trustee in connection with any Advance or the proceeds of such Advance or otherwise in connection with this Credit Enhancement Instrument. Each reduction shall be permanent or subject to reinstatement as provided in this Section. Such reduction shall be applied to the Principal Portion, the Interest Portion and the Issuer's Fee Portion as appropriate for the Advance to which the reduction relates.

(b) **Permanent Reduction for each Principal Advance.** The Principal Portion, Interest Portion and Issuer's Fee Portion shall be reduced automatically and permanently upon the making of any Principal Advance as follows:

(i) the Principal Portion will be reduced by the amount of the Principal Advance;  
and

(ii) the Interest Portion will be reduced by an amount equal to 34 days of interest (calculated at the rate of 12% per annum on the basis of a year of 365 days) on the amount of the related permanent reduction of the Principal Portion; and

(iii) the Issuer's Fee Portion will be reduced in an amount equal to 0.02% multiplied by the amount of the related permanent reduction of the Principal Portion, plus \$4,000.

(c) **Permanent Reduction on Notice from the Trustee.** The Amount Available shall be reduced automatically by the amounts specified in any Certificate in the form of Exhibit E which is delivered to Fannie Mae. Such reduction shall be applied to the Principal Portion, the Interest Portion and the Issuer's Fee Portion as set out in the Certificate.

(d) **Reinstatement of Interest Portion for Interest Advance.** Except for a permanent reduction of the Interest Portion under subsection (b)(ii), the amount of the Interest Portion reduced by an Interest Advance shall be reinstated immediately and automatically.

(e) **Reinstatement of Pledged Bonds Advance.** The Principal Portion and the Interest Portion shall be reinstated after each Pledged Bonds Advance upon receipt by Fannie Mae of money equal to the amount by which the Trustee requests Fannie Mae to increase the Principal Portion and the Interest Portion in a Certificate of Reinstatement in the form of Exhibit F.

(f) **Reinstatement of Issuer's Fee Advance.** Except for a permanent reduction of the Issuer's Fee Portion under subsection (b)(iii), the amount of the Issuer's Fee Portion reduced by an Issuer's Fee Advance shall be reinstated immediately and automatically.

Upon any permanent reduction of the Amount Available, Fannie Mae may deliver to the Trustee a substitute Credit Enhancement Instrument in exchange for this Credit Enhancement Instrument, in an amount available equal to the then current Amount Available, but otherwise having terms identical to this Credit Enhancement Instrument.

**9. Discharge of Obligations.** Only the Trustee may demand an Advance under this Credit Enhancement Instrument. Upon payment to the Trustee of the amount specified in any Certificate presented under this Credit Enhancement Instrument, Fannie Mae shall be fully discharged of its obligation under this Credit Enhancement Instrument with respect to such Certificate and Fannie Mae shall not thereafter be obligated to make any further payment to the Trustee or any other person (including the Issuer, with respect to payment of the Issuer's Fee) in respect of such Certificate for payment of principal of, purchase price of, or interest on any Bond, or payment of the Issuer's Fee.

**10. Nature of Fannie Mae's Obligations.** Fannie Mae's obligation to make Advances to the Trustee upon the proper presentation of documents which conform to the terms and conditions of this Credit Enhancement Instrument is absolute, unconditional and irrevocable, shall be fulfilled strictly in accordance with this Credit Enhancement Instrument, and shall not be affected by any right of set-off, recoupment or counterclaim Fannie Mae might otherwise have against the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, the Borrower, the Loan Servicer or any other person.

Fannie Mae's obligations under this Credit Enhancement Instrument are primary obligations and shall not be affected by the performance or non-performance by the Issuer under the Indenture or the Bonds or by the Borrower under the Note or the Reimbursement Agreement or by the performance or non-performance of any party under any other agreement between or among any of the Issuer, the Trustee, the Borrower or Fannie Mae.

**11. Transfer.** This Credit Enhancement Instrument may be successively transferred in whole only, to each successor Trustee under the Indenture. Any such transfer shall be effective upon receipt by Fannie Mae of a signed copy of the instrument effecting such transfer signed by the transferor and by the transferee in the form attached as Exhibit H (which shall be conclusive evidence of such transfer). In each such case, the transferee instead of the transferor shall, without the necessity of further action, be entitled to all the benefits of and rights under this Credit Enhancement Instrument in the transferor's place.

**12. Notices and Deliveries.** All documents, notices and other communications, other than Certificates, shall be in writing and personally delivered to Fannie Mae at the address (and to the attention of the party) set out in Section 4(a) or may be sent to Fannie Mae by telecopy immediately followed by telephonic notice as set out in Section 4(b), as such address, telephone and telecopy numbers and parties to whom such notices are sent are changed by Fannie Mae pursuant to Section 4.

**13. Governing Law.** This Credit Enhancement Instrument shall be governed by the laws of the District of Columbia, including the Uniform Commercial Code as in effect in the District of Columbia.

**14. Entire Credit Enhancement Instrument.** This Credit Enhancement Instrument sets forth in full the terms of Fannie Mae's undertaking and shall not in any way be amended, amplified or limited by reference to any document, instrument or agreement referred to in this Credit Enhancement Instrument (including, without limitation, the Bonds) or in which this Credit Enhancement Instrument is referred to or to which this Credit Enhancement Instrument relates, except for (i) the Exhibits referred to in this Credit Enhancement Instrument and (ii) any Presentation Protocol, all of which shall be deemed fully incorporated into this Credit Enhancement Instrument as if fully set forth herein.

FANNIE MAE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**CERTIFICATE FOR “PRINCIPAL ADVANCE”**

**DIRECT PAY**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Attention: Director, Multifamily Asset Management

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the direct pay Credit Enhancement Instrument, that:

(1) **Demand for Advance.** The Trustee demands an Advance in the amount of \$\_\_\_\_\_ under the Principal Portion of the Amount Available to be used to pay principal of the Bonds due as a result of the acceleration, defeasance, redemption or stated maturity of the Bonds pursuant to the Indenture.

(2) **When the Advance Must be Made.** If this demand for Advance is made:

(a) at or prior to 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the next following Business Day.

(b) after 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the second following Business Day.

(3) **Where the Advance Must be Made.** Please pay the Advance demanded by this Certificate to the Trustee at \_\_\_\_\_ [**specify account**].

(4) **Amount Available.** Upon the payment of the Advance:

(a) **Reduction of Amount Available.** The Amount Available shall be reduced automatically and permanently by \$[**insert amount of reduction**] of which:

(1) \$\_\_\_\_\_ is attributable to the Principal Portion; [and]

(2) \$\_\_\_\_\_ is attributable to the Interest Portion[.][and]

[ (3) \$\_\_\_\_\_ is attributable to the Issuer’s Fee Portion (computed at a rate of 0.02% multiplied by the outstanding principal amount of the Note, plus \$4,000). ]

(b) **New Amount Available.** The Amount Available will be \$\_\_\_\_\_, of which:

(1) \$\_\_\_\_\_ will be the Principal Portion; [and]

(2) \$\_\_\_\_\_ will be the Interest Portion[.] [and]

[(3) \$\_\_\_\_\_ will be the Issuer's Fee Portion (computed at a rate of 0.\_\_\_\_% multiplied by the outstanding principal amount of the Note).]

(5) **Other Matters.**

(a) The Trustee is the Trustee under the Indenture for the holders of the Bonds.

(b) The principal of the Bonds (other than Excluded Bonds) that is due on [Trustee: complete this blank using the first Business Day after the date of this Certificate] is \$\_\_\_\_\_. The amount of the Advance demanded in Paragraph 1 does not exceed such amount of principal.

(c) The amount of the Advance (i) does not exceed the Principal Portion of the Amount Available on the date of this Certificate and (ii) was computed in accordance with the Bonds and the Indenture.

(d) Upon the payment referred to in Paragraph 1, the aggregate principal amount of all Bonds outstanding will be \$\_\_\_\_\_.

(e) Upon receipt by the Trustee of the Advance, (i) the Trustee will apply the same directly for the purpose specified in Paragraph 1, and (ii) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in Paragraph 1.

(f) The proceeds of the Advance demanded by this Certificate will not be applied to any payment on any Excluded Bonds.

(g) The aggregate principal amount of all Excluded Bonds outstanding is \$\_\_\_\_\_.

(h) The amount of interest (computed at the Maximum Interest Rate (as that term is defined in the Indenture), which currently is \_\_\_\_\_\* percent per annum) on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable), accruing on the Bonds referred to in subparagraph (d) above in any period of \_\_\_\_\*\* days is \$\_\_\_\_\_.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

\* Trustee: Fill in current Maximum Interest Rate.

\*\* Trustee: Fill in number of days of interest coverage required to be supplied by the Interest Portion.

**Exhibit B**

**CERTIFICATE FOR “INTEREST ADVANCE”**

**DIRECT PAY**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the Credit Enhancement Instrument, that:

(1) **Demand for Advance.** The Trustee demands an Advance in the amount of \$\_\_\_\_\_ under the Interest Portion of the Amount Available to be used to pay interest on the Bonds (other than Excluded Bonds) on or prior to their stated maturity date.

(2) **When the Advance Must be Made.** If this demand for Advance is made:

(a) at or prior to 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the next following Business Day.

(b) after 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the second following Business Day.

(3) **Where the Advance Must be Made.** Please pay the Advance demanded by this Certificate to the Trustee at \_\_\_\_\_ [specify account].

(4) **Other Matters.**

(a) The Trustee is the Trustee under the Indenture for the holders of the Bonds.

(b) The amount of the Advance referred to in Paragraph 1 was computed in accordance with the Bonds and the Indenture and does not exceed the amount of interest that is (i) due on the Business Day following the date of this Certificate on the Bonds and (ii) the Interest Portion of the Amount Available on the date of this Certificate.

(c) Upon receipt by the Trustee of the amount demanded by this Certificate, (i) the Trustee will apply the same directly for the purpose specified in Paragraph 1 and (ii) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in Paragraph 1.

(d) The proceeds of the Advance demanded by this Certificate will not be applied to any payment on any Excluded Bonds.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**Exhibit C**

**CERTIFICATE FOR “PLEGGED BONDS ADVANCE”**

**DIRECT PAY**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the Credit Enhancement Instrument, that:

(1) **Demand for Advance.** The Trustee demands an Advance in the amount of \$\_\_\_\_\_, consisting of (i) \$\_\_\_\_\_ under the Principal Portion of the Amount Available to be used to pay the principal portion of the purchase price of Bonds and (ii) \$\_\_\_\_\_ under the Interest Portion of the Amount Available to be used to pay the interest portion of the purchase price of Bonds purchased pursuant to Section 4.1(a), 4.2(a) or 4.2(b) of the Indenture (“**Tendered Bonds**”).

(2) **When the Advance Must be Made.** (Trustee: check applicable box)

The Advance relates to a mandatory tender of Bonds pursuant to Section 4.2(b) of the Indenture. Accordingly, if this demand for Advance is made:

(w) at or prior to 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the next following Business Day.

(x) after 12:00 noon Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the second following Business Day.

The Advance does not relate to a mandatory tender of Bonds pursuant to Section 4.2(b) of the Indenture. Accordingly, if this demand for Advance is made:

(y) at or prior to 10:30 a.m. Eastern time on a Business Day, you must pay the Advance no later than 1:30 p.m. Eastern time on the same Business Day.

(z) after 10:30 a.m. Eastern time on a Business Day, you must pay the Advance no later than 1:30 p.m. Eastern time on the next following Business Day.

(3) **Where the Advance Must be Made.** Please pay the Advance demanded by this Certificate to the Trustee at \_\_\_\_\_ [**specify account**].

(4) **Other Matters.**

(a) The Trustee is the Trustee under the Indenture for the holders of the Bonds.

(b) The amount demanded pursuant to Paragraph 1 does not exceed the amount necessary, at the time of the presentation of this Certificate to Fannie Mae, to pay the purchase price of the Tendered Bonds which the Remarketing Agent has not remarketed or for which the Remarketing Agent has not received sufficient remarketing proceeds to pay the purchase price of the Tendered Bonds.

(c) The principal component of the aggregate purchase price of the Tendered Bonds that is due on the date of this Certificate is \$\_\_\_\_\_, and the amount of the Advance relating to the Principal Portion referred to in Paragraph 1 does not exceed such amount of principal. The aggregate accrued interest component of the purchase price of the Tendered Bonds that is due on the date of this Certificate is \$\_\_\_\_\_ and the amount of the Advance relating to the Interest Portion referred to in Paragraph 1 does not exceed such amount.

(d) On the date of this Certificate, (i) the principal portion of the Advance does not exceed the Principal Portion of the Amount Available and (ii) the interest portion of the Advance does not exceed the Interest Portion of the Amount Available. The amount of the Advance was computed in accordance with the Bonds and the Indenture.

(e) Upon receipt by the Trustee of the Advance demanded by this Certificate, (i) the Trustee will apply the same directly for the purpose specified in Paragraph 1 and (ii) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in Paragraph 1

(f) The proceeds of the Advance demanded by this Certificate will not be applied to defease, redeem or pay (whether at stated maturity or by acceleration) any Excluded Bond.

(g) Bonds in a principal amount equal to the Principal Portion of the Advance made under this Certificate will be delivered to **[Custodian]**\* or if, and only if, delivery of the Bonds is not possible, a written entitlement order will be delivered to the applicable financial intermediaries on whose records ownership of the Pledged Bonds is reflected directing the intermediaries to credit the security entitlement to the Pledged Bonds to the account of **[Custodian]**\* for the benefit of Fannie Mae and a written confirmation of such credit will be delivered to the **[Custodian]**\*.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

---

\* Fill in name of Custodian under the Pledge Agreement.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**Exhibit D**

**CERTIFICATE FOR “ISSUER’S FEE ADVANCE”**

**STAND-BY**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the Credit Enhancement Instrument, that:

(1) **Demand for Advance.** The Trustee demands an Advance in the amount of \$\_\_\_\_\_ under the Issuer’s Fee Portion of the Amount Available to be used to pay the Issuer’s Fee.

(2) **When the Advance Must be Made.** If this demand for Advance is made:

(a) at or prior to 5:00 p.m. Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the fifth Business Day following such presentation.

(b) after 5:00 p.m. Eastern time on a Business Day, you must pay the Advance no later than 1:00 p.m. Eastern time on the sixth Business Day following such presentation.

(3) **Where the Advance Must be Made.** Please pay the Advance demanded by this Certificate to the Trustee at \_\_\_\_\_ [specify account].

(4) **Other Matters.**

(a) The Trustee is the Trustee under the Indenture for the holders of the Bonds.

(b) The Borrower has failed to pay the Issuer’s Fee by [date of annual, quarterly or monthly payment].

(c) The amount of the Advance demanded (i) does not exceed the Issuer’s Fee Portion of the Amount Available and (ii) was computed in accordance with the terms and conditions of the Financing Agreement dated March 1, 2004 among the Issuer, the Trustee and the Borrower.

(d) Upon receipt by the Trustee of the Advance (i) the Trustee will apply the same directly for the purpose specified in Paragraph 1 and (ii) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in Paragraph 1.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**Exhibit E**

**CERTIFICATE OF REDUCTION**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the Credit Enhancement Instrument, as follows:

- (1) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) The aggregate principal amount of Bonds outstanding has been reduced to \$\_\_\_\_\_.
- (3) Effective on [insert date]:
  - (a) the Amount Available shall be reduced by \$\_\_\_\_\_, of which (i) \$\_\_\_\_\_ is a reduction of the Principal Portion, (ii) \$\_\_\_\_\_ is a reduction of the Interest Portion and (iii) \$\_\_\_\_\_ is a reduction of the Issuer’s Fee Portion;
  - (b) after such reduction, the Amount Available will be \$\_\_\_\_\_, of which (i) \$\_\_\_\_\_ will be the Principal Portion, (ii) \$\_\_\_\_\_ will be the Interest Portion and (iii) \$\_\_\_\_\_ will be the Issuer’s Fee Portion; and
  - (c) after such reduction, the Amount Available will be not less than the aggregate unpaid principal amount of the Bonds Outstanding (as that term is defined in the Indenture).

By its execution hereof, Geneva Elk Grove L.P. (“**Borrower**”) certifies to Fannie Mae that the Trustee is authorized to deliver this Certificate to Fannie Mae. The Borrower and the Trustee further certify that the amounts specified in Paragraph 3 have been determined in accordance with the terms and conditions of the Indenture and the Reimbursement Agreement.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

IN WITNESS WHEREOF, the Trustee and the Borrower have executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**GENEVA ELK GROVE L.P.**,  
a California limited partnership

By: PACIFIC HOUSING, INC., a California  
nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
Executive Director

By: ANTON GENEVA, LLC, a California  
limited liability company, its Co-General  
Partner

By: ST. ANTON CAPITAL, LLC,  
a California limited liability company,  
its Manager

By: \_\_\_\_\_  
Steven L. Eggert,  
Authorized Member

**Exhibit F**

**CERTIFICATE OF REINSTATEMENT**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016  
Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the Trustee named below (“**Trustee**”), certifies to Fannie Mae, with reference to the Credit Enhancement Instrument, as follows:

- (1) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) The Trustee has received notification from the Tender Agent that Bonds pledged to Fannie Mae by the Borrower which were acquired with the proceeds of a Pledged Bonds Advance under the Credit Enhancement Instrument are to be remarketed or sold. The Trustee has received and is transferring to Fannie Mae the amount set forth in Paragraph 3.
- (3) Upon receipt by Fannie Mae of this certificate and \$\_\_\_\_\_, the Amount Available will be increased as follows:
  - (a) the Principal Portion of the Amount Available will be increased by \$\_\_\_\_\_, but such increase shall not cause the Principal Portion to exceed the original Principal Portion less the sum of (i) all Principal Advances paid by Fannie Mae in accordance with the Credit Enhancement Instrument and (ii) the aggregate of all reductions of the Principal Portion pursuant to any Certificate of the Trustee in the form of Exhibit E; and
  - (b) the Interest Portion of the Amount Available will be increased by \$\_\_\_\_\_, but such increase shall not cause the Interest Portion to exceed the original Interest Portion less the aggregate of (i) all Interest Advances for interest which have not been reinstated in accordance with the Credit Enhancement Instrument, subject to the reinstatement of such amounts as set forth in the Credit Enhancement Instrument, (ii) all reductions of the Interest Portion due to any permanent reduction of the Principal Portion of the Amount Available and (iii) to the extent not addressed in (ii), all reductions of the Interest Portion pursuant to any Certificate of the Trustee in the form of Exhibit E.
- (4) Fannie Mae shall promptly release or direct Fannie Mae’s custodian in writing to release the Pledged Bonds to the Tender Agent in a principal amount corresponding to the Principal Portion identified in Paragraph 3 or, if such release is not possible, Fannie Mae shall be deemed to consent to the delivery of a written entitlement order to the applicable financial intermediary on whose records ownership of such Pledged Bonds is reflected to credit the ownership entitlement to such Bonds to the account as directed by the Trustee. Such release or deemed consent shall be conclusive evidence of the reinstatement of the Principal Portion and Interest Portion as described in Paragraph 3.

Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**Exhibit G**

**NOTICE OF TERMINATION**

Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016  
Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned, a duly authorized officer of the undersigned Trustee (“**Trustee**”), certifies to Fannie Mae, with respect to the Credit Enhancement Instrument, that the Trustee is authorized to file this notice pursuant to the Indenture. Any capitalized, but undefined, term used in this Certificate is used as defined in the Credit Enhancement Instrument.

The undersigned certifies to Fannie Mae: \*

\_\_\_\_\_ (a) None of the Bonds are Outstanding under the Indenture.

\_\_\_\_\_ (b) The Trustee has received an Alternate Credit Facility (as such term is defined in the Indenture) as permitted by the Indenture and the Reimbursement Agreement.

\* Trustee: Check applicable paragraph.

Pursuant to the Indenture we enclose the Credit Enhancement Instrument for cancellation.

Very truly yours,

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

Dated: \_\_\_\_\_

By its execution hereof, Geneva Elk Grove L.P. (“**Borrower**”) hereby certifies to Fannie Mae that all conditions precedent to the cancellation of the Credit Enhancement Instrument and substitution of an Alternate Credit Facility set forth in the Indenture and the Reimbursement Agreement have been satisfied and hereby joins in the Trustee’s instructions to Fannie Mae may cancel the same.

**GENEVA ELK GROVE L.P.**,  
a California limited partnership

By: PACIFIC HOUSING, INC., a California  
nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
Executive Director

By: ANTON GENEVA, LLC, a California  
limited liability company, its Co-General  
Partner

By: ST. ANTON CAPITAL, LLC,  
a California limited liability  
company, its Manager

By: \_\_\_\_\_  
Steven L. Eggert,  
Authorized Member

**Exhibit H**

**CERTIFICATE FOR SUCCESSOR TRUSTEE**

Fannie Mae  
3900 Wisconsin Avenue  
Washington, D.C. 20016

Attention: Director, Multifamily Operations

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“**Credit Enhancement Instrument**”)

\$13,070,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Bonds (Geneva Pointe Apartments) 2004 Series A

The undersigned is a duly authorized officer of the Trustee under the Indenture for the holders of the Bonds

The Trustee transfers all rights in the Credit Enhancement Instrument to \_\_\_\_\_, subject to the terms and conditions of the Credit Enhancement Instrument. The Trustee certifies that the transferee is the successor Trustee under the Indenture referred to in the Credit Enhancement Instrument and such successor Trustee has been approved in writing by Fannie Mae. The transferee acknowledges below that it is the successor Trustee. Such successor Trustee has entered into a written agreement to be bound by the Assignment and Intercreditor Agreement dated March 1, 2004 by and among Fannie Mae, the Trustee and the Issuer.

By this transfer, all rights of the undersigned Trustee in the Credit Enhancement Instrument are transferred to the transferee and the transferee shall have the sole rights as the beneficiary, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

The above signature of an officer or other authorized representative conforms to that on file with us. Said officer or representative is authorized to sign for said party.

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

\_\_\_\_\_ acknowledges that it is the successor to \_\_\_\_\_,  
\_\_\_\_\_, as Trustee under the Indenture.

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

## APPENDIX E

### SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT

*The following is a brief summary of the Regulatory Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Regulatory Agreement, a copy of which is on file with the Trustee.*

#### Definitions

“*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.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the United States Housing Act of 1937, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

“*Agreement*” means the Financing Agreement entered into by the Borrower, the Trustee and the Issuer pursuant to which the Loan is made.

“*Area*” means the metropolitan statistical area, as determined by the United States Department of Housing and Urban Development, in which the Project is located.

“*CDLAC*” means the California Debt Limit Allocation Committee and its successors and assigns.

“*Certificate of Continuing Program Compliance*” means the certificate with respect to the Project to be filed by the Borrower with the Issuer and the Trustee which shall be substantially in the form attached to the Regulatory Agreement as Exhibit D.

“*City*” means the City of Elk Grove, California and its successors and assigns.

“*Facilities*” means the buildings, structures and other improvements to be acquired, constructed and developed on the Site, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Project.

“*Income Computation and Certification*” means the Income Computation and Certification which shall be substantially in the form attached to the Regulatory Agreement as an exhibit.

“*Program Administrator*” means a governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on bond financed multifamily housing projects which shall initially be the Issuer and, at the Issuer's election, any other person or entity appointed by the Issuer who shall enter into an administration agreement in a form acceptable to the Issuer and the Program Administrator.

“*Project*” means the Facilities and the Site.

“*Qualified Project Period*” means the period beginning on the date on which ten percent (10%) of the units in the Project are first occupied, and ending on the later of (a) the date which is 55 years after the date on which at least fifty percent (50%) of the residential units in the Project are first occupied, (b) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates. For purposes of clause (b), the term “private activity bond” has the meaning contemplated in Section 142(d)(2)(A)(ii) of the Code.

“*Regulations*” means the income tax regulations promulgated or proposed by the United States Department of the Treasury pursuant to the Code from time to time.

“*Site*” means the parcel or parcels of real property described in Exhibit “A” of the Regulatory Agreement, and by this reference incorporated therein, and all rights and appurtenances thereunto appertaining.

“*Tax-Exempt Bonds*” means the Series A Bonds.

“*Very Low Income Tenants*” mean the Individuals or families with an Adjusted Income which does not exceed 60 percent of the Median Income for the Area, adjusted for household size. In no event, however, will the occupants of a residential unit be considered to be Very Low Income Tenants if all the occupants are students, as defined in Section 151(c)(4) of the Code, as such may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 151(c)(4) defines a student as an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

“*Very Low Income Units*” means the dwelling units in the Project designated for occupancy by Very Low Income Tenants pursuant to the Regulatory Agreement.

## **Residential Rental Property**

The Borrower acknowledges and agrees that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) until the expiration of the Qualified Project Period. To that end, and for the term of the Regulatory Agreement, the Borrower thereby represents, as of the date thereof, and covenants, warrants and agrees as follows:

(a) The Project will be acquired, constructed and developed for the purpose of providing multifamily residential rental property, and the Borrower shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator (to the extent required by the Code and the Regulations) and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Borrower shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written approving opinion of Bond Counsel that will cause the interest on the Bonds to be includable in gross income for federal income tax purposes under Section 103 of the Code.

(e) All of the dwelling units will be available for rental on a continuous basis to members of the general public and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Very Low Income Tenants.

(f) The Site consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No dwelling unit in the Project shall be occupied by the Borrower unless the Project contains five or more dwelling units, in which case one unit may be occupied by the Borrower or by persons related to or affiliated with the Borrower such as a resident manager or maintenance personnel.

(h) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Bond Issuance Date which prevents the Issuer from enforcing the requirements of the Regulations, or condemnation or similar event, the Borrower covenants that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Note or apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the Regulations.

(i) The Borrower shall not discriminate on the basis of race, religion, creed, color, sex, source of income (e.g. TANF, SSI), physical disability, age, national origin or marital status in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(j) The Borrower shall provide competent and responsible management for the Project by a management company, and pursuant to a written management agreement, satisfactory to the Issuer. St. Anton Management, Inc. and Jon Berkley Management, Inc. are currently satisfactory to the Issuer. In the event that the Issuer determined, in its sole discretion, that the management company for the Project is not performing a competent and responsible manner, the Issuer may, with the consent of the Credit Provider, require the removal of the management company. The Borrower shall not enter into any management agreement or arrangement with any other party with respect to the management of the Project without the Issuer's prior written consent, such consent not to be unreasonably withheld. The Borrower shall not materially modify, amend or terminate any approved management agreement without the Issuer's prior written consent, which consent will not be unreasonably withheld.

The Issuer elects in the Regulatory Agreement to have the Project meet the requirements of section 142(d)(1)(B) of the Code.

**Very Low Income Tenants**

Pursuant to the requirements of Section 142(d) of the Code and applicable provisions of the Act, the Borrower represents in the Regulatory Agreement, as of the date thereof, and warrants, covenants and agrees as follows:

- (a) During the Qualified Project Period:
  - (i) not less than forty percent (40%) of the completed units in the Project shall be designated as Very Low Income Units which are occupied, or held vacant for occupancy, and shall be continuously occupied by Very Low Income Tenants. All of the Very Low Income Units shall be generally distributed in terms of location and number of bedrooms throughout the Project. The Very Low Income Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.
  - (ii) the monthly rent paid by the persons occupying the Very Low Income Units (including any supplemental rental assistance from the State, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area, as adjusted by the assumed household size set forth below of each such Very Low Income Unit; for the purpose of this section, the Borrower shall assume the household size set forth in the following table for the corresponding size of residential unit:

<b><u>Residential Unit Size by Bedroom</u></b>	<b><u>No. of Persons in Family</u></b>
Studio	1
1	2
2	3
3	4

(iii) Very Low Income Units shall remain available on a priority basis for occupancy by Very Low Income Tenants. A unit occupied by a Very Low Income Tenant who at the commencement of the occupancy is a Very Low Income Tenant shall be treated as occupied by a Very Low Income Tenant until a recertification of such tenant's income in accordance with section (c) below demonstrates that such tenant no longer qualifies as a Very Low Income Tenant and thereafter any residential unit in the Project is occupied by a new resident other than a Very Low Income Tenant. Moreover, a unit previously occupied by a Very Low Income Tenant and then vacated shall be considered occupied by a Very Low Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

(iv) Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the bonds, deed in lieu of the foreclosure, eminent domain, or action of a federal agency preventing enforcement, Very Low Income Units required to be reserved for occupancy pursuant to subparagraph (a) shall remain available to the Very Low Income Tenant occupying a Very Low Income Unit at the date of expiration or termination of the Qualified Project Period, at a rent not greater than the amount set forth by subparagraph (a)(2),

until the earliest of (a) The Very Low Income Tenant's income exceeds 140 percent of the maximum eligible income specified in the definition of Very Low Income Tenant, (b) The Very Low Income Tenant voluntarily moves or is evicted for "good cause". "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the Project or the purposes or special program of the Project, (c) The Borrower pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code of the State of California.

(v) During the three years prior to expiration of the Qualified Project Period, the Borrower shall continue to make available to Very Low Income Tenants, Very Low Income Units that have been vacated to the same extent the units in the Project which are not Very Low Income Units are made available to noneligible households.

(b) Immediately prior to a Very Low Income Tenant's occupancy of a Very Low Income Unit, the Borrower will obtain and maintain on file an Income Computation and Certification form from each Very Low Income Tenant occupying a Very Low Income Unit, dated immediately prior to the initial occupancy of such Very Low Income Tenant in the Project. In addition, the Borrower will provide such further information as may be required in the future by the State of California, the Issuer and by the Act, Section 142(d) of the Code and the Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. The Borrower shall verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (1) obtain a federal income tax return for the most recent tax year, (2) obtain a written verification of income and employment from applicant's current employer, (3) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income satisfactory to the Program Administrator or (4) such other information as may be requested by the Program Administrator.

Copies of the most recent Income Computation and Certifications for Very Low Income Tenants commencing or continuing occupancy of a Very Low Income Unit shall be retained on file with the Borrower and available for review by the Program Administrator.

(c) Immediately prior to the first anniversary date of the occupancy of a Very Low Income Unit by one or more Very Low Income Tenants, and on each anniversary date thereafter, the Borrower shall recertify the income of the occupants of such Very Low Income Unit by obtaining a completed Income Computation and Certification based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 140% of the income at which such household would qualify as Very Low Income Tenants, such household will no longer qualify as a Very Low Income Tenant, the rent to be applied to the Very Low Income Unit occupied by such Very Low Income Tenant may be increased, and the Borrower will rent the next available unit of comparable or smaller size to one or more Very Low Income Tenants and will not rent any unit comparable or smaller to tenants who are not Very Low Income Tenants until at least forty percent (40%) of the units are again occupied by Very Low Income Tenants. No tenant in the Project shall be denied continued occupancy in the Project because, after occupancy, such tenant's household income increases such that the income for such household will no longer qualify such household as Very Low Income Tenants. An "available" unit is one that is unoccupied by a tenant.

(d) On or before July 15 of each year, the Borrower shall advise the Issuer and the Program Administrator of the status of the occupancy of the Project by delivering to such parties a Certificate of Continuing Program Compliance. The Borrower shall submit to the Secretary of the Treasury annually on the anniversary date of the start of the Qualified Project Period, or such other date as is required by the Secretary, a certification that the Project continues to meet the requirements of Section 142(d) of the Code, and shall provide a copy of such certification to the Issuer and the Program Administrator, if any.

(e) The Borrower will maintain complete and accurate records pertaining to the Very Low Income Units, and will permit any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, CDLAC or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Very Low Income Units.

(f) The Borrower shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Borrower shall not collect any additional fees or payments from a Very Low Income Tenant except security deposits or other deposits required of all tenants. The Borrower shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 Program. The Borrower shall not discriminate against Very Low Income Tenant applicants on the basis of source of income (i.e., TANF or SSI), and the Borrower shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (ability to pay shall be demonstrated if a Very Low Income Tenant can show that the same percentage or more of the tenant's income has been paid for rent in the past as will be required to be paid for the rent applicable to the Very Low Income Unit to be occupied provided that such Very Low Income Tenant's expenses have not materially increased).

(g) Each lease pertaining to a Very Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Very Low Income Tenant in determining qualification for occupancy of the Very Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease will also contain a provision that failure to cooperate with the annual recertification process reasonably instituted by the Borrower pursuant to Section 4(c) above may at the option of the Borrower disqualify the unit as a Very Low Income Unit or provide grounds for termination of the lease.

(h) The acquisition, construction and operation of the Project and the financing thereof is and shall be in compliance with the conditions set forth in Exhibit A to The CDLAC Resolution No. 03-206 adopted on December 17, 2003 and attached to the Regulatory Agreement as Exhibit G (the "CDLAC Resolution"), which conditions are incorporated in the Regulatory Agreement by reference and are made a part thereof; provided, however, neither the Issuer nor the Program Administrator shall be required to monitor the Borrower's compliance with the provisions of this paragraph (h). The Borrower shall prepare and submit to CDLAC a Certificate of Compliance in substantially the form attached to the Regulatory Agreement as Exhibit E, executed by an authorized representative of the Borrower.

## **Tax Status of the Bonds**

The Borrower and the Issuer each represents in the Regulatory Agreement, as of the date thereof, and warrants, covenants and agrees that:

(a) It will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the exemption from California personal income taxation of the interest on the Bonds and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(b) It will take such action or actions as may be necessary, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, to comply fully with the Act and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142(d) of the Code to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds; and

(c) It will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, in order to insure that the requirements and restrictions of the Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of the Regulatory Agreement in the real property records of the County.

The Borrower covenants to include the requirements and restrictions contained in the Regulatory Agreement in any document (other than in any document granting a security interest in the Project to the Loan Servicer or Fannie Mae and in any leases to individual occupants of units in the Project) transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement during the term of the Agreement; provided, however, that no such agreement shall be required in connection with a transfer of the Project to Fannie Mae or the Loan Servicer by foreclosure, deed in lieu of foreclosure or comparable conversion of the Fannie Mae Loan.

## **Sale or Transfer of the Project**

The Borrower intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, and in the Regulatory Agreement, covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated under the Regulatory Agreement), without obtaining the prior consent of the Issuer, which consent shall not be unreasonably withheld so long as the following criteria are met, and upon receipt by the Issuer and the Trustee of (i) reasonable evidence satisfactory to the Issuer and the Trustee that the Borrower's purchaser or transferee has assumed in writing and in full, the Borrower's duties and obligations under the Regulatory Agreement, acknowledgment of which shall be provided to the Borrower at its request, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Borrower under the Regulatory Agreement and that such obligations and the Regulatory Agreement are binding on the transferee, (iii) the Issuer receives evidence acceptable to the Issuer that (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects such as the Project without any record of material full adjudicated violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, and (B) if the purchaser or assignee does not have management experience, the purchaser or assignee agrees

to retain a property management firm with the experience and record described in subparagraph (A) above or the Issuer will or will cause the Program Administrator to provide on-site training in program compliance if the Issuer determines such training is necessary, (iv) except with respect to a transfer of the Project by Fannie Mae, the Loan Servicer or the Construction Lender in connection with a foreclosure, deed in lieu or comparable conversion of the Loan or the Construction Phase Credit Documents, no event of default exists under any of the Loan Documents, the Regulatory Agreement or the Agreement at the time of the transfer or any such default shall be cured concurrently with the transfer, and payment of all fees and expenses of the Issuer and the Trustee are current, and (v) an opinion of Bond Counsel to the effect that such sale will not cause interest on any Bond to become includable in the gross income of the recipients thereof for federal income tax purposes. Notwithstanding the above, so long as the above conditions have been met and the Issuer has received all documentation it has requested, the Issuer's consent to a sale, transfer or other disposition of the Project shall be deemed given thirty (30) days subsequent to such conditions being met and such documents being received. It is expressly stipulated and agreed in the Regulatory Agreement that any sale, transfer or other disposition of the Project in violation of the section titled "Sale or Transfer of the Project" in the Regulatory Agreement shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under the Regulatory Agreement. Nothing in the section titled "Sale or Transfer of the Project" in the Regulatory Agreement shall affect any provision of any other document or instrument between the Borrower and any other party which requires the Borrower to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project or of any direct or indirect interest in the Project or of any interest in the Borrower. Not less than 30 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Borrower shall deliver to the Issuer and the Trustee a notice in writing explaining the nature of the proposed transfer. The Borrower shall not syndicate the Project unless such syndication meets the requirements of the Act or any successor provision.

All restrictions on sale or transfer of the Project or of any interest in the Borrower, consents of the Issuer or the Trustee, transfer agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to Fannie Mae, or to a third party designee by Fannie Mae, or the Construction Lender by foreclosure, deed in lieu of foreclosure or comparable conversion of the Security Instrument or under the Construction Phase Credit Documents. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Loan Documents which requires the Borrower to obtain the consent of Fannie Mae or the Construction Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument or the Construction Phase Credit Documents. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall apply to a transfer to Fannie Mae or the Construction Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan by Fannie Mae or the Construction Lender. Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement unless the obligations of the Borrower therein have been assumed by the transferee as set forth in the Regulatory Agreement, in which case the obligations incurred by the transferee Borrower from and after the transfer date shall not be the responsibilities of the original Borrower.

## **Term**

Subject to the following paragraph of this section, the Regulatory Agreement and all and several of the terms thereof shall become effective upon its execution and delivery and shall remain in full force

and effect during the Qualified Project Period, it being expressly agreed and understood that the provisions thereof are intended to survive the retirement of the Bonds and expiration of the Indenture, then Regulatory Agreement and the Note. Notwithstanding any other provisions of the Regulatory Agreement to the contrary, the entire Regulatory Agreement, or any of the provisions or sections thereof, may be terminated upon agreement by the Issuer, the Trustee and the Borrower subject to compliance with any of the provisions contained in the Regulatory Agreement only if there shall have been received an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the exemption from State personal income taxation of the interest on the Bonds. The Borrower shall provide notice of any termination of the Regulatory Agreement to the Trustee.

The terms of the Regulatory Agreement to the contrary notwithstanding, the Regulatory Agreement, and all and several of the terms thereof, shall terminate and be of no further force and effect in the event of a foreclosure or delivery of a deed in lieu of foreclosure whereby a third party (other than the Borrower or any related person of the Borrower) shall take possession of the Project or involuntary non-compliance with the provisions of the Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the date hereof which prevents the Issuer and the Trustee from enforcing the provisions thereof or condemnation or a similar event and, in each case, the payment in full and retirement of the Bonds theretofore or within a reasonable period thereafter; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained therein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person to it (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for Federal income tax purposes. Upon the termination of the terms of the Regulatory Agreement, the parties thereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms thereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of the Regulatory Agreement in accordance with its terms.

## **Enforcement**

If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after notice thereof shall have been given by the Issuer or the Trustee to the Borrower (provided, however, that the Issuer may at its sole option extend such period if the Borrower provides the Issuer with an opinion of Bond Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds), then the Trustee, subject to the provisions of the section titled "Reliance" in the Regulatory Agreement and to the extent directed by and acting on behalf of the Issuer, shall declare an "Event of Default" to have occurred under the Regulatory Agreement, and, subject to the provisions of the Indenture, may take any one or more of the following steps:

- (i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants under the Regulatory Agreement or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee under the Regulatory Agreement;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project; or

(iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower under the Regulatory Agreement.

In the event of any conflict of terms between the provisions of the Regulatory Agreement and those provisions contained in the Assignment, the provisions of the Assignment shall govern.

The Trustee shall have the right, in accordance with the section titled “Enforcement” in the Regulatory Agreement and the provisions of the Indenture, without the consent or approval of the Issuer, to exercise any or all of the rights or remedies of the Issuer hereunder; provided that prior to taking any such act the Trustee shall give the Issuer written notice of its intended action. All reasonable fees, costs and expenses of the Trustee incurred in taking any action pursuant to the section titled “Enforcement” in the Regulatory Agreement shall be the sole responsibility of the Borrower.

After the Indenture has been discharged, or if the Trustee fails to act under the section titled “Enforcement” in the Regulatory Agreement, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified in the Regulatory Agreement to the same extent and with the same effect as if taken by the Trustee.

Notwithstanding anything in the Regulatory Agreement or in the Indenture to the contrary, (i) the liability of the Borrower hereunder shall be limited as provided in the Agreement and (ii) the occurrence of an event of default under the Regulatory Agreement in respect of any party other than the Borrower shall not be deemed, under any circumstances whatsoever, to be a default under the Loan Documents. The parties of the Regulatory Agreement agree that the maturity date of the Note may be accelerated solely by the holder thereof upon the occurrence of a default on the part of the Borrower under the Loan Documents that is not cured during any applicable grace period in accordance with their respective terms and for no other reason.

#### **No Interference or Impairment of Loan**

Notwithstanding anything in the Regulatory Agreement to the contrary, as long as the Credit Facility or any other credit enhancement facility provided by Fannie Mae remains outstanding and Fannie Mae is not in default of its obligations under the Credit Facility or any such other credit enhancement facility, (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Loan Documents, except as may be otherwise specified in the Loan Documents, and shall not impair, defeat or render invalid the lien of the Security Instrument or the Construction Phase Mortgage and (ii) none of the Issuer, the Loan Servicer, the Trustee nor any other person shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Loan;

(b) interfere with or attempt to interfere with or influence the exercise by Fannie Mae or the Loan Servicer of any of their rights under the Loan, including, without limitation, Fannie Mae's or the Loan Servicer remedial rights under the Loan Documents upon the occurrence of an event of default by the Borrower under the Loan; or

(c) upon the occurrence of an event of default under the Loan, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Loan,

it being understood and agreed that neither the Issuer nor the Trustee may, without the prior written consent of Fannie Mae, on account of any default under the Regulatory Agreement, seek, in any manner, to cause the Loan to become due and payable, to enforce the Note or to foreclose on the Security Instrument or cause the Trustee to redeem the Bonds or to declare the principal of the Bonds and the interest accrued on the Bonds to be immediately due and payable, or cause the trustee to foreclose or take any other action under the Bond Documents, the Loan Documents or any other documents which would or could have the effect of achieving any one or more of the foregoing actions, events or results.

No person other than Fannie Mae shall have the right to declare the principal balance of the Note to be immediately due and payable or to initiate foreclosure or other like action under the Security Instrument.

The foregoing prohibitions and limitations shall not limit the rights of the Issuer or the Trustee to specifically enforce the Regulatory Agreement or to seek injunctive relief in order to provide for the operation of the Project in accordance with the requirements of the Code and the Act, and shall not be construed to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of the Regulatory Agreement provided that the prosecution of a claim for indemnification shall not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in the Regulatory Agreement to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under the Regulatory Agreement which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall, as provided in the section titled "Subordination" in the Regulatory Agreement, be subject and subordinate in all respects to the repayment in full of all amounts due to Fannie Mae under the Loan Documents.

All obligations of the Borrower under the Regulatory Agreement for the payment of money, including claims for indemnification and damages shall not be secured by or in any manner constitute a lien on the Project, and neither the Issuer nor the Trustee shall have the right to enforce such obligations other than directly against the Borrower pursuant to the section titled "Enforcement" of the Regulatory Agreement.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner of the Project unless specifically assumed in writing by a subsequent owner of the Project, including, but not limited to, (i) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement, or (ii) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under the Regulatory Agreement. The Borrower and each subsequent owner of the Project shall be responsible under the Regulatory Agreement for its owner acts or omissions occurring during the period of its ownership of the Project. Such obligations shall be personal to the person who was the Borrower at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned by the default or breach even after such person ceases to be the Borrower of the Project.

Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Loan Servicer and Fannie Mae, inform the Loan Servicer and Fannie Mae that such violation has occurred, the nature of the violation and that the violation has

been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Fannie Mae Loan, to enforce the Note or to foreclose on the Security Instrument.

### **Subordination**

The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in sections titled “Residential Rental Property” and “Low Income Tenants”, are and shall at all times hereafter remain subject and subordinate, in all respects, to the liens, rights and interests created under the Loan Documents. Upon a conveyance or other transfer of title to the Project by foreclosure (judicial or under power of sale), deed in lieu of foreclosure or comparable conversion of the Loan, the Person who acquires title to the Project pursuant to such foreclosure or deed in lieu of foreclosure or comparable conversion (unless such Person is the Borrower or a person related to the Borrower with the meaning of Section 1.103.10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in sections titled “Residential Rental Property” and “Low Income Tenants,” and, from and after the date on which such Person acquires title to the Project, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in sections titled “Residential Rental Property” and “Low Income Tenants,” shall automatically terminate and be of no force and effect; provided that sections titled “Residential Rental Property” and “Low Income Tenants,” shall also terminate and be of no force or effect under the circumstances set forth in the second paragraph of the section titled “Term” in the Regulatory Agreement.

## APPENDIX F

### SUMMARY OF CERTAIN PROVISIONS OF THE REIMBURSEMENT AGREEMENT

*The following is a brief summary of certain provisions of the Reimbursement Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Reimbursement Agreement, a copy of which is on file with the Trustee.*

The Credit Facility is issued pursuant to the Reimbursement Agreement which obligates the Borrower, among other things, to reimburse Fannie Mae for funds advanced by Fannie Mae under the Credit Facility and to pay various fees and expenses, in each case as provided in the Reimbursement Agreement.

The Reimbursement Agreement sets forth various affirmative and negative covenants of the Borrower, some of which are more restrictive with respect to the Borrower than similar covenants in the Financing Agreement.

The parties to the Reimbursement Agreement can amend the Reimbursement Agreement at any time, without the consent of, or notice to, the Issuer, the Trustee or the holders of the Bonds.

Capitalized terms used in this Appendix which are not defined in this Official Statement will have the meanings assigned thereto in the Reimbursement Agreement.

#### **Events of Default**

The occurrence of any one or more of the following events constitutes an event of default under the Reimbursement Agreement:

(a) the Borrower fails to pay when due any amount payable by the Borrower under the Reimbursement Agreement, the Note, the Financing Agreement, the Security Instrument or any other Transaction Document; or

(b) the occurrence of a Borrower Default under the Construction Phase Financing Agreement; or

(c) the occurrence of any Event of Default under any Transaction Document other than the Reimbursement Agreement beyond any cure period set forth in that Transaction Document; or

(d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, key principal or any guarantor:

(1) contained in the Reimbursement Agreement, the Certificate of Borrower or any other Borrower Document or any certificate delivered by the Borrower to Fannie Mae or to the Loan Servicer pursuant to the Reimbursement Agreement or any other Borrower Document; or

(2) in connection with (i) the application for or creation of the Loan or the credit enhancement or liquidity support for the Bonds provided by the Credit Facility, (ii) any financial statement, rent roll, or other report or information provided to Fannie Mae or the Loan Servicer during the term of the Reimbursement Agreement or the Loan, or (iii) any request for Fannie Mae's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement or contained in this Agreement,

the Certificate of Borrower or any other Borrower Document or any certificate delivered by the Borrower to Fannie Mae or to the Loan Servicer pursuant to this Agreement or any other Borrower Document; or

(e) a Tax Event (as that term is defined in the Indenture) occurs; or

(f) any failure by the Borrower to perform or observe any of its obligations under the Reimbursement Agreement (other than as set forth in subsections (a) through (d) above), as and when required, which continues for a period of 30 days after notice of such failure by Fannie Mae or the Loan Servicer to the Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Fannie Mae's or the Loan Servicer's judgment, absent immediate exercise by Fannie Mae of a right or remedy under the Reimbursement Agreement, result in harm to Fannie Mae, impairment of the Note, the Reimbursement Agreement, the Security Instrument or any other security given under any other Transaction Document; or

(g) the Borrower fails to pay when due or within any applicable grace period any amount payable by the Borrower under any Hedging Arrangement, or the occurrence of any other default or event of default, however described, by the Borrower under any Hedging Arrangement.

### **Remedies Upon an Event of Default**

Upon the occurrence of an Event of Default under the Reimbursement Agreement, the Obligations and all amounts owing under the Reimbursement Agreement may be declared by Fannie Mae to become immediately due and payable, without presentment, demand, protest or notice of any kind, including notice of default, notice of intent to accelerate or notice of acceleration. In addition, Fannie Mae shall have the right to take such action at law or in equity, without notice or demand, as it deems advisable to protect and enforce the rights of Fannie Mae against the Borrower and/or in and to the Mortgaged Property, including, but not limited to, any one or more or all of the following actions:

(1) deliver to the Trustee written notice that an Event of Default has occurred under the Reimbursement Agreement and direct the Trustee to take such action pursuant to the Transaction Documents as Fannie Mae may determine, including a request that the Trustee declare the principal of all or a portion of the Bonds then outstanding and the interest accrued thereon to be immediately due and payable in accordance with the terms and conditions of the Indenture;

(2) demand cash collateral or Permitted Investments in an amount equal to the maximum liability of Fannie Mae under the Credit Enhancement Instrument, whether or not then due and payable by Fannie Mae; and

(3) exercise any rights and remedies available to Fannie Mae under the Transaction Documents.

### **Waiver**

Fannie Mae shall have the right, in its discretion, to waive any Event of Default under the Reimbursement Agreement. Unless such waiver expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence which gave rise to the Event of Default so waived and not to any other similar event or occurrence which occurs subsequent to the date of such waiver.

## APPENDIX G

### SUMMARY OF CERTAIN PROVISIONS OF THE NOTE

*The following is a brief summary of certain provisions of the Note. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Note, a copy of which is on file with the Trustee.*

#### **Evidences Loan**

The Note evidences the Loan.

#### **Payment Terms**

Under the terms of the Note, the Borrower promises to pay to the order of the Issuer the principal of, premium, if any, and interest on the Note at the times and in the amounts necessary to pay all principal of, premium, if any, and interest on the Bonds as they become due, whether at maturity, by acceleration, by optional, mandatory or sinking fund redemption or otherwise. The Borrower shall pay all unpaid principal of and interest on the Note until the entire indebtedness evidenced by the Note is paid in full, except that any remaining indebtedness, if not sooner paid, is due and payable on the maturity date of the Bonds. The Issuer will endorse the Note to the order of the Trustee and Fannie Mae, as their interests may appear.

Except as otherwise provided in the Note, the Borrower shall pay Note Interest (as hereinafter defined), in arrears, beginning with the first Note Interest Payment Date (as hereinafter defined). "Note Interest Payment Date" means during any Weekly Variable Rate Period (a) the fifteenth day of each calendar month commencing on the first Interest Payment Date with respect to the Bonds set forth on the cover hereof; (b) each Adjustment Date and (c) the Maturity Date.

#### **Note Interest**

Except as otherwise provided in the Note, interest ("Note Interest") shall accrue on the unpaid principal of the Note from, and including, the Closing Date until paid in full. If the interest rate on the Bonds is a Weekly Variable Rate, the Note will bear interest at a variable rate of interest which floats and changes with, and is equal to, the Weekly Variable Rate.

Note Interest shall automatically and simultaneously change with each corresponding change in the interest rate on the Bonds under the Indenture. Notwithstanding any other provision of the Note to the contrary, Note Interest shall not exceed the Maximum Rate (as hereinafter defined), as the Maximum Rate may change in accordance with the Indenture. During the Weekly Variable Rate Period, Note Interest shall be computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable. During any other period, Note Interest shall be computed on the basis of a 360 day year comprised of twelve 30 day months.

"Maximum Rate" means 12% per annum; provided, however, that the Maximum Rate may be increased if the Trustee receives (i) the written consent of the Credit Provider to a specified higher Maximum Rate not to exceed the lesser of the maximum rate permitted by law to be paid on the Bonds and the maximum rate chargeable on the Loan, (ii) an opinion of Bond Counsel to the effect that such higher Maximum Rate is permitted by law and will not adversely affect either the validity of the Bonds or the exclusion of the interest payable on the Bonds from gross income for federal income tax purposes, and

(iii) a new or amended Credit Facility in an amount equal to the sum of (A) the then outstanding principal amount of the Bonds and (B) the new Interest Requirement calculated using the new Maximum Rate.

### **Voluntary and Mandatory Prepayments**

ALTHOUGH THE BORROWER MAY HAVE THE RIGHT TO PREPAY THE LOAN IN ACCORDANCE WITH THE NOTE, THE REIMBURSEMENT AGREEMENT MAY LIMIT THE BORROWER'S EXERCISE OF THESE RIGHTS WITHOUT THE WRITTEN CONSENT OF THE CREDIT PROVIDER. THE BORROWER MAY BE REQUIRED TO PAY A TERMINATION FEE TO THE CREDIT PROVIDER. PREPAYMENTS ARE SUBJECT TO LOAN SERVICING UNDER THE REIMBURSEMENT AGREEMENT. SEE THE REIMBURSEMENT AGREEMENT FOR ALL DETAILS.

(a) **Prepayment Premium.** Any prepayment of the principal of the Note will result in a redemption of a corresponding principal amount of the Bonds. A redemption premium may be payable in connection with such redemption of any redemption premium due on the Bonds, the Borrower shall pay such amount as a prepayment premium under the Note. If the Note is prepaid by a voluntary payment pursuant to the provisions described in subparagraphs (c) or (d) or a mandatory prepayment described in subparagraph (e), the Borrower will pay, in addition to the other amounts due under the Note, a prepayment premium equal to the premium, if any, due upon redemption of the corresponding Bonds as provided in the Indenture. The Borrower shall pay any prepayment premium with Available Moneys. The Borrower acknowledges that the Credit Provider is not credit enhancing the payment of any prepayment premium on the Loan or premium on the redemption of any of the Bonds.

(b) **Timing of Credit of Payments as Prepayments.** No payment to be applied as a prepayment (whether voluntary or mandatory) of principal of the Note shall be credited against the unpaid principal of the Note until the date on which Bonds in a like amount are redeemed or defeased pursuant to the Indenture. Until the Borrower's payment is credited as a prepayment, the amount of the intended prepayment shall continue to be unpaid principal of the Note and shall continue to bear interest to the date of prepayment.

(c) **Voluntary Prepayments.** The Borrower may voluntarily prepay the Note only during the periods or on the dates, as appropriate, as provided in the following clauses:

(i) **During Weekly Variable Rate Period.** On any Interest Payment Date for the Bonds within a Weekly Variable Rate Period, the Borrower may voluntarily prepay the principal balance of the Note, in whole or in part.

(ii) **On Adjustment Date.** On any Adjustment Date, the Borrower may voluntarily prepay the principal balance of the Note, in whole or in part.

Any partial voluntary prepayment must be in an amount corresponding to the then applicable Authorized Denomination of the Bonds.

(d) **Conditions Precedent to Voluntary Prepayments.** The right of Borrower to voluntarily prepay the principal of the Note, in whole or in part, as permitted by the Note is subject to the satisfaction of the following conditions precedent:

(i) the Borrower has given written notice of such prepayment to the Issuer, the Trustee, the Credit Provider, the Loan Servicer and the Remarketing Agent at least 30

days prior to the effective date of prepayment in accordance with the Note, which notice shall state the date of such prepayment and the amount of principal to be prepaid;

(ii) the Borrower has paid the amounts specified in the Note not later than one Business Day prior to the date under the Indenture, the Trustee must have received such funds for such redemption; and

(iii) the Issuer, the Credit Provider, the Loan Servicer and the Remarketing Agent are provided a certificate of the Trustee to the effect that the Trustee holds on deposit Available Moneys which are both sufficient and available under the terms of the Indenture for a payment of any bond redemption premium, and the Trustee holds on deposit moneys which are both sufficient and available under the terms of the Indenture to pay the costs and expenses required to be paid in connection with the redemption of the Bonds to be redeemed as a result of the prepayment under the Note.

(e) **Mandatory Prepayments.** Each of the following shall be or require a mandatory prepayment of the principal of the Note:

(i) The partial prepayment of the Loan by reason of the making of a Pre Conversion Loan Equalization Payment.

(ii) Any reduction and, therefore, amortization of the Loan by reason of the withdrawal of any amount from the Principal Reserve Fund and the application of such amount to the payment of, or the reimbursement to the Credit Provider for an Advance made for, the principal of any of the Bonds, the principal component of the redemption price of any of the Bonds or the principal component of the defeasance of any of the Bonds, all as provided in the Indenture, except for the payment of the principal of any Bond as such principal is scheduled to be paid.

(iii) Any application by the Issuer of any collateral or other security to the repayment of any principal of the Note to the extent of the principal amount of such repayment.

(iv) The Issuer's exercise of the right of acceleration of the Note to the extent of the outstanding principal amount of the Note.

(v) Any acceleration or mandatory redemption of the Bonds to the extent of the principal amount of such Bonds.

(vi) Any reduction and, therefore, amortization of the Loan by reason of the withdrawal of any amount from any Fund or Account under the Indenture, not described in the Note, resulting in a payment, redemption or defeasance of any of the Bonds, except to the extent that such funds are applied to:

(A) a Sinking Fund Payment required by the Indenture for the redemption of any of the Bonds;

(B) the payment of the principal of any Bond as such principal is scheduled to be paid; or

(C) a voluntary prepayment of the Note which causes a voluntary redemption of Bonds.

### **Limits on Personal Liability**

Except as otherwise provided below or in any of the other Loan Documents, the Borrower shall have no personal liability under the Note, the Security Instrument or any other Loan Document for the repayment of the Note or for the performance of any other obligations of the Borrower under the Loan Documents, and the Issuer's only recourse for the satisfaction of the Note and the performance of such obligations shall be the Issuer's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by the Issuer as security for the Note. This limitation on the Borrower's liability shall not limit or impair the Issuer's enforcement of its rights against any guarantor of the Note or any guarantor of any other obligations of the Borrower.

The Borrower shall be personally liable to the Issuer for the repayment of a portion of the Note equal to any loss or damage suffered by the Issuer as a result of (a) failure of the Borrower to pay to the Issuer upon demand after an Event of Default under the Security Instrument, all Rents to which the Issuer is entitled under the Security Instrument and the amount of all security deposits collected by the Borrower from tenants then in residence; (b) failure of the Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (c) failure of the Borrower to comply with the provisions of the Security Instrument relating to the delivery of books and records, statements, schedules and reports; (d) fraud or written material misrepresentation by the Borrower, key principal or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Loan or any request for any action or consent by the Issuer; or (e) failure to apply Rents, first, to the payment of reasonable operating expenses (other than Property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other agreement with the Issuer executed in connection with the Loan) and then to amounts ("Debt Service Amounts") payable under the Note, the Security Instrument or any other Loan Document (except that the Borrower will not be personally liable (i) to the extent that the Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed in any calendar year if the Borrower has paid all operating expenses and Debt Service Amounts for that calendar year).

The Borrower shall become personally liable to the Issuer for the repayment of all of the principal of and interest on the Note and for the payment, performance and observation of all obligations, covenants and agreements of the Borrower contained in the Security Instrument, including the payment of all sums advanced by or on behalf of Issuer to protect the security of the Security Instrument under the Security Instrument, upon the occurrence of any of the following: (a) the Borrower's acquisition of any property or operation of any business not permitted by the Security Instrument; (b) a Transfer (as that term is defined in the Security Instrument) that is an Event of Default under the Security Instrument or (c) a Bankruptcy Event. As used in this subparagraph, the term "Bankruptcy Event" means any one or more of the following events which occurs during any time that a Hedging Arrangement (as defined in the Note) (other than a Hedge) is outstanding:

(1) The Borrower (i) commences a voluntary case (or, if applicable, a joint case) under any Chapter of the Bankruptcy Code, (ii) institutes (by petition, application, answer, consent or otherwise) any other bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, (iii) makes a general assignment for the benefit of creditors, (iv) applies for, consents to or acquiesces in the appointment of any receiver, liquidator, custodian, sequestrator,

trustee or similar officer for it or for all or any substantial part of the Mortgaged Property or (v) admits in writing its inability to pay its debts generally as they mature.

(2) Any key principal or any Affiliate of a key principal files an involuntary petition against the Borrower under any Chapter of the Bankruptcy Code or under any other bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to the Borrower under the laws of any jurisdiction.

(3) Both (a) an involuntary petition under any Chapter of the Bankruptcy Code is filed against the Borrower or the Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (b) the Borrower or any affiliate of the Borrower has acted in concert or conspired with such creditors of the Borrower (other than the Issuer) to cause the filing thereof with the intent to interfere with enforcement rights of the Issuer after the occurrence of an Event of Default.

To the extent that the Borrower has personal liability as described above, the Issuer may exercise its rights against the Borrower personally without regard to whether the Issuer has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to the Issuer under the Note, the Security Instrument, any other Loan Document or applicable law. For purposes of the provisions of the Note described under this heading, the term "Mortgaged Property" shall not include any funds that (a) have been applied by the Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default under the Security Instrument, or (b) the Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding.