

**NEW ISSUE  
BOOK-ENTRY ONLY**

**RATING: S&P "AAA/A-1+"  
(See "RATINGS" herein.)**

In the opinion of Jones Hall, A Professional Law Corporation, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest on the Series A Bonds is excluded from gross income for federal income tax purposes, except during any period wherein a Series A Bond is held by a "substantial user" of the facilities financed by the Series A Bonds or by a "related person" within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954, as amended, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although, for purposes of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. Interest on the Series A-T Bonds is subject to all applicable federal taxation. In the further opinion of Bond Counsel, interest on the Bonds is exempt from personal income taxation imposed by the State of California. See "TAX MATTERS" herein.

**\$10,500,000**  
**ABAG Finance Authority For Nonprofit Corporations**  
**Variable Rate Demand Multifamily**  
**Housing Revenue Refunding Bonds**  
**(Amber Court Apartments)**  
**2002 Series A**

**\$335,000**  
**ABAG Finance Authority For Nonprofit Corporations**  
**Variable Rate Demand Taxable**  
**Multifamily Housing Revenue Refunding Bonds**  
**(Amber Court Apartments)**  
**2002 Series A-T**

**Dated: Date of Delivery**

**Maturity Date: December 15, 2032**

The above-captioned bonds (the "Bonds") are being issued on a parity basis by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") under a Trust Indenture, dated as of December 1, 2002 (the "Indenture"), by and between the Issuer and U.S. Bank, N.A., as trustee (the "Trustee"). The Bonds are being issued to provide funds to redeem the outstanding principal amount of City of Fremont, California Variable Rate Demand Multifamily Refunding Revenue Bonds (Amber Court Apartments) 1990 Issue A (the "Prior Bonds"). The Prior Bonds were issued to provide funding for a loan made by the Issuer to Amber Court Associates, a California limited partnership (the "Borrower"), to refinance the acquisition and construction of a multifamily rental housing project located in Livermore, California (the "Project" or the "Mortgaged Property"). The proceeds of the Bonds will be loaned (the "Loan") by the Issuer to the Borrower pursuant to a Financing Agreement, dated as of December 1, 2002 (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 the Bonds will be payable on the fifteenth day of each month, commencing January 15, 2003. 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 interest rate on the Bonds is proposed to be adjusted to one of the other Modes, the Bonds will be subject to mandatory tender for purchase. See "THE BONDS-Purchase and Remarketing of Bonds" herein.

THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD THE BONDS BEAR INTEREST AT THE WEEKLY VARIABLE RATE AND ARE SECURED BY THE CREDIT FACILITY. INVESTORS SHOULD NOT RELY ON THIS OFFICIAL STATEMENT IF THE INTEREST RATE ON THE BONDS IS ADJUSTED TO A RESET RATE OR TO THE FIXED RATE, OR IF THE BONDS ARE SECURED BY A REPLACEMENT CREDIT FACILITY OR AN ALTERNATE CREDIT FACILITY.

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 the Closing Date (the "Credit Facility").



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, upon seven days' written notice, to tender their Bonds for purchase to the Tender Agent, at its Designated Office, on any Business Day. The Bonds are also subject to mandatory tender and purchase as described herein. See "THE BONDS-Purchase and Remarketing of Bonds" herein. The Bonds are subject to mandatory redemption and optional redemption prior to maturity as described herein. See "THE BONDS-Redemption" 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"), ANY OF THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TOT THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO 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 AGENCY OR INSTRUMENTALITY THEREOF 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 being offered when, as and if issued by the Issuer, subject to the approving opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Issuer by Sidley Austin Brown & Wood LLP, for the Underwriter by Quint & Thimmig LLP, San Francisco, California, for Fannie Mae by its Legal Department and by its special counsel, O'Melveny & Myers LLP; and for the Borrower by Kutak Rock LLP, Scottsdale, Arizona. It is expected that the Bonds will be available for delivery through DTC on or about December 11, 2002.

**RBC DAIN RAUSCHER**

Dated: December 10, 2002

No dealer, broker, salesperson 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 in connection with the offer or sale of the Bonds 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 (to the limited extent described below), the Borrower, Fannie Mae (to the limited extent described below) and DTC and other sources that 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 description under the captions "THE ISSUER" and "NO LITIGATION-The Issuer," or Fannie Mae, except with respect to the description under the caption "FANNIE MAE." 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" (as it relates to 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 description 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 Mortgaged Property, or compliance with any securities, tax or other laws or regulations. Fannie Mae's role with respect to the Bonds is limited to providing the Credit Facility described herein to the Trustee.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the information referenced herein since the date hereof.

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. THE UNDERWRITER MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS AND DEALER BANKS AND OTHERS AT A PRICE LOWER THAN THE PUBLIC OFFERING PRICE STATED ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICE MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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## OFFICIAL STATEMENT

**\$10,500,000**  
**ABAG Finance Authority For Nonprofit  
Corporations**  
**Variable Rate Demand Multifamily  
Housing Revenue Refunding Bonds**  
**(Amber Court Apartments)**  
**2002 Series A**

**\$335,000**  
**ABAG Finance Authority For Nonprofit  
Corporations**  
**Variable Rate Demand Taxable  
Multifamily Housing Revenue Refunding Bonds**  
**(Amber Court Apartments)**  
**2002 Series A-T**

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 and the Credit Facility (as each such term is hereinafter defined).

### INTRODUCTION

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 its \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A (the "Series A Bonds") and its \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T (the "Series A-T Bonds" and, together with the Series A Bonds, the "Bonds"). The Bonds are being issued pursuant to Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Act"), and will be equally and ratably secured by, and issued pursuant to, a Trust Indenture, dated as of December 1, 2002 (the "Indenture"), between the Issuer and U.S. Bank, N.A., as trustee (the "Trustee").

The Bonds are being issued to provide funds, along with certain other funds, to redeem the outstanding principal amount of City of Fremont, California Variable Rate Demand Multifamily Refunding Revenue Bonds (Amber Court Apartments) 1990 Issue A (the "Prior Bonds"). The Prior Bonds were issued to provide funding for a loan made by the Issuer to Amber Court Associates, a California limited partnership (the "Borrower"), to refinance the acquisition and construction of a residential rental housing project located in Fremont, California (the "Project"). The proceeds of the Bonds will be loaned (the "Loan") by the Issuer to the Borrower pursuant to a Financing Agreement, dated as of December 1, 2002 (the "Financing Agreement"), among the Issuer, the Borrower and the Trustee. Pursuant to the Indenture, the Issuer will assign the Financing Agreement (including all of the rights of the Issuer thereunder, except for the Issuer's 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 Issuer will originate the Loan on the Closing Date. The Loan will be evidenced by a multifamily note (the "Note") executed by the Borrower in favor of the Issuer and secured by a first lien priority Multifamily Deed of Trust, Assignment of Rents and Security Agreement encumbering the Project (the "Security Instrument"). The Note is a nonrecourse obligation of

the Borrower subject to certain limited exceptions. 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.

The Loan will be made 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 Capri Capital Finance, LLC, a Delaware limited liability company (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 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 G. 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.

On the Closing Date, the Note and the Security Instrument will be assigned by the Issuer to the Trustee and Fannie Mae, as their interests may appear, and upon such assignment will be part of the Trust Estate securing the Bonds. Pursuant to an Assignment and Intercreditor Agreement, dated as of the date of the Indenture, by and among the Issuer, Fannie Mae and the Trustee and acknowledged, accepted and agreed to by the Borrower (the "Assignment"), the right, power and authority to make decisions in connection with the Loan and the Bonds and under the Loan Documents and the Bond Documents will be vested in Fannie Mae.

In order to assure compliance with the applicable provisions of the Internal Revenue Code of 1986 (the "Code") in order that the interest on the Series A Bonds be excluded from the gross incomes of the owners thereof as described in "TAX MATTERS" herein, the Borrower, the Trustee and the Issuer have entered into an Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2002 (the "Regulatory Agreement"). 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 D – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT."

Any failure of the Borrower to comply with the terms of the Regulatory Agreement may cause interest on the Series A Bonds to be included in the gross income of the owners thereof for federal income tax purposes, possibly retroactively as well as prospectively. See "TAX MATTERS" herein. None of the Trustee, the Issuer or the Bondholders may cause an acceleration or redemption of any of the Bonds solely because of a default by the Borrower under the Regulatory Agreement or because interest on the Series A Bonds becomes includable in the gross income of the owners thereof for federal income tax purposes.

Fannie Mae has designated the Loan Servicer to service the Loan for Fannie Mae or may elect to service the Loan itself. Neither Fannie Mae nor the Loan Servicer will have any responsibility to monitor the Borrower's compliance with the requirements of the Regulatory Agreement.

THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD THAT THE BONDS BEAR INTEREST AT THE WEEKLY VARIABLE RATE AND ARE

SECURED BY THE CREDIT FACILITY. INVESTORS SHOULD NOT RELY ON THIS OFFICIAL STATEMENT IF THE INTEREST RATE ON THE BONDS IS ADJUSTED TO A RESET RATE OR TO THE FIXED RATE, OR IF THE BONDS ARE SECURED BY A REPLACEMENT CREDIT FACILITY OR AN ALTERNATE CREDIT FACILITY.

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 AGENCY OR INSTRUMENTALITY THEREOF OR OF FANNIE MAE. THE BONDS ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA.

Brief descriptions of the Bonds, the sources of payment for the Bonds, the Issuer, Fannie Mae, the Borrower and the Project and summaries of the Indenture, Financing Agreement, Regulatory Agreement, Reimbursement Agreement and Note are attached as appendices to this Official Statement. A form of the Credit Facility is attached as Appendix G. All references herein to the Indenture, Financing Agreement, Regulatory Agreement, Credit Facility, Reimbursement Agreement and 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 attached to the Indenture, copies of which are available for inspection at the corporate trust office of the Trustee at One California Street, Suite 2550, San Francisco, California 94111, Attention: Corporate Trust Department.

## THE BONDS

### General

The Bonds of each series will be issued in the Principal Amount with respect to such series set forth in the Indenture, and both series will be dated the Closing Date, will bear interest from the Closing Date at a rate of interest determined as described below, will be payable on each Interest Payment Date and will mature on the Maturity Date, subject to prior redemption as described herein. The Bonds will be issued as registered bonds without coupons in Authorized Denominations. So long as Cede & Co., as nominee of DTC, is the registered owner of the Bonds, references herein to the Bondholders or holders or registered owners or owners of the Bonds mean Cede & Co. and not the beneficial owners of the Bonds.

The principal of and the interest and any premium on the Bonds are payable in lawful money of the United States of America to the Registered Owners at the close of business on the applicable Record Date. Payment of interest on the Bonds will be made on each Interest Payment Date by check drawn upon the Trustee and mailed on such Interest Payment Date by first class mail, postage prepaid, to the addresses of the Registered Owners as they appear on the Bond Register or to such other address as may be furnished in writing by any Registered Owner to the Trustee prior to the applicable Record Date. Payment of the principal of any Bond and premium, if any, together with interest (other than interest payable on a regularly scheduled Interest Payment Date) will be made by check only upon presentation and surrender of the Bond on or after its maturity date or date fixed for purchase, redemption or other payment at the office of the Trustee designated for that purpose. Notwithstanding the foregoing, payment of principal of and interest and any premium on any Bond will be made by wire transfer to any account within the United States of America designated by a Registered

Owner owning \$1,000,000 or more in aggregate principal amount of Bonds if a written request for wire transfer in form and substance satisfactory to the Trustee is delivered to the Trustee by any such Registered Owner not less than five Business Days prior to the applicable payment date. A request for wire transfer that specifies that it is effective with respect to all succeeding payments of principal, interest and any premium will be so effective unless and until rescinded in writing by the Registered Owner at least five Business Days prior to a Record Date. If interest on the Bonds is in default, the Trustee, prior to the payment of interest, will establish a special record date ("Special Record Date") for such payment. A Special Record Date may not be more than 15 nor less than ten days prior to the date of the proposed payment. Payment of defaulted interest will then be made by check or wire transfer, as described above, mailed or remitted to the Registered Owners in whose names the Bonds are registered on the Special Record Date.

### **Weekly Variable Rate Mode**

The Bonds will bear interest at a Weekly Variable Rate, determined separately with respect to the Series A Bonds and the Series A-T Bonds, until the interest on the Bonds is adjusted to a Reset Rate or to the Fixed Rate. The Bonds are subject to mandatory tender for purchase on each Adjustment Date. See "Purchase and Remarketing of Bonds-Mandatory Tender and Purchase" below. During the Weekly Variable Rate Period, interest will accrue on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed.

During each Weekly Variable Rate Period, the Remarketing Agent will determine the Weekly Variable Rate for each Week for each series of the Bonds not later than 4:00 p.m. Eastern time on each Rate Determination Date. The Weekly Variable Rate for each Week for each series of the Bonds will be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds of such series on the applicable Rate Determination Date at par plus accrued interest on the Bonds for that Week. The Weekly Variable Rate so determined will be effective for the Week for which such rate was determined. The Remarketing Agent will provide notice of the Weekly Variable Rate for each Week for each series of the Bonds before 5:00 p.m. Eastern time on the Rate Determination Date by telephone to any Beneficial Owner upon request and to the Loan Servicer, and not later than the next Business Day to the other Remarketing Notice Parties by Electronic Means. The Weekly Variable Rate for each series of the Bonds so determined by the Remarketing Agent will be conclusive and binding upon the Remarketing Notice Parties and the Registered Owners. Notwithstanding any other provision of the Indenture, the interest rate on the Bonds may not exceed the Maximum Rate.

### **Failure by Remarketing Agent to Determine Weekly Variable Rate**

If the Remarketing Agent fails or refuses to determine the Weekly Variable Rate applicable for any Week, the interest rate to be borne by (i) the Series A Bonds during such Week will be the latest BMA Index Rate published on or before the Rate Determination Date (or, in the event the BMA Index Rate is no longer published, the last Weekly Variable Rate determined by the Remarketing Agent), and (ii) the Series A-T Bonds during such Week shall be LIBOR published on or before the Rate Determination Date plus twenty (20) basis points or in the event LIBOR is no longer published, the last Weekly Variable Rate for the Series A-T Bonds determined by the Remarketing Agent. The Trustee will be entitled to rely on a certificate of the Remarketing Agent specifying such rate or rates.

## Mode Adjustments

At the option of the Borrower, the interest rate on all Outstanding Bonds may be adjusted on any Interest Payment Date from the Weekly Variable Rate to a Reset Rate or to the Fixed Rate. Not less than 30 days before the proposed Adjustment Date, the Trustee is required to give written notice to the Bondholders, stating: (A) the proposed Adjustment Date; (B) that from and after the proposed Adjustment Date, if the conditions specified in the Indenture to such adjustment are satisfied, the Bonds will bear interest at a Reset Rate or the Fixed Rate, as applicable (which rate need not be stated); and (C) that all Bonds are subject to mandatory tender and purchase on the proposed Adjustment Date, whether or not such conditions are satisfied, and no holder of any Bond will have the right to elect to retain such Bond. See "Purchase and Remarketing of Bonds-Mandatory Tender and Purchase" below.

If the conditions precedent to a change in Mode set forth in the Indenture have not been satisfied, the new Mode will not take effect and the Bonds will be subject to mandatory tender on the proposed Adjustment Date and the holders of the Bonds will not have the right to elect to retain their Bonds.

THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD THAT THE BONDS BEAR INTEREST AT THE WEEKLY VARIABLE RATE AND ARE SECURED BY THE CREDIT FACILITY. INVESTORS SHOULD NOT RELY ON THIS OFFICIAL STATEMENT IF THE INTEREST RATE ON THE BONDS IS ADJUSTED TO A RESET RATE OR TO THE FIXED RATE, OR IF THE BONDS ARE SECURED BY A REPLACEMENT CREDIT FACILITY OR AN ALTERNATE CREDIT FACILITY.

## Redemption

All redemptions must be in Authorized Denominations, provided that any redemption in part will be in such amount that the Bonds remaining Outstanding will be in Authorized Denominations.

Optional Redemption. The Bonds are subject to optional redemption in whole or in part upon optional prepayment of the Loan by the Borrower. Optional redemptions will be made on any Interest Payment Date within a Weekly Variable Rate Period and on any Adjustment Date at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the Redemption Date, without premium. 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 as described under this heading, on the earliest practicable Redemption Date for which timely notice of redemption can be given pursuant to the Indenture as described under the heading "Notice of Redemption to Registered Owners" below following the occurrence of the event requiring such redemption. The principal of and accrued interest on any Bond being redeemed as described under this heading 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, without premium.

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.

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 as described in this subsection following any Event of Default under the Reimbursement Agreement. The Redemption Date shall be the earliest practicable date, but in no event will such redemption occur later than two Business Days prior to the date, if any, that the Credit Facility terminates on account of the Credit Provider's giving of direction to the Trustee pursuant to this subsection to redeem all of the Bonds. See "THE BORROWER AND THE PROJECT – Expiration of Borrower, Early Redemption" herein.

Principal Reserve Fund. The Bonds will be redeemed in whole or in part (a) on each Adjustment Date in an amount equal to the amount which has been transferred from the Principal Reserve Fund on such Adjustment Date to the Redemption Account pursuant to the Indenture and (b) 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 as described in Appendix B hereto under paragraph (f) under the heading "Principal Reserve Fund-Disbursements from the Principal Reserve Fund."

Borrower Default. The Bonds will be redeemed in whole if the Credit Provider notifies the Trustee that a Borrower Default has occurred.

Notice of Redemption to Registered Owners. For any redemption of Bonds pursuant to the Indenture (other than as described under the heading "Mandatory Redemption-After an Event of Default Under the Reimbursement Agreement" above), the Trustee will give notice of redemption by first class mail, postage prepaid, not less than 10 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 will not be required to give the notice set forth in the immediately preceding sentence. In the case of any redemption as a result of an event of default under the Reimbursement Agreement, notice of redemption may be given on or before the Redemption Date. An optional redemption under the Indenture will be a Conditional Redemption, and the notice of redemption will state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds, and such notice and optional redemption will 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 (ii) the Trustee, at the direction of the Credit Provider, rescinds such notice on or prior to the scheduled Redemption Date. The Trustee will cause a second notice of redemption to be sent by first class mail, postage prepaid, on or within ten days after the 30th day after the Redemption Date to any Bondholder who has not submitted its Bond to the Trustee for payment. The Trustee will provide copies of all notices given as described under this heading and of all revocations of notices to the Credit Provider and the Loan Servicer at the same time it gives notices to Bondholders.

Additional Notice. At the same time notice of redemption is sent to the Registered Owners as described under the preceding heading, the Trustee will send notice of redemption by first class mail, overnight delivery service or other overnight means, postage or service prepaid (i) to the Rating Agency, (ii) if the Bonds are not subject to the Book-Entry System, to certain municipal registered Securities Depositories (described in the Indenture) 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 (described in the Indenture) that disseminate securities redemption notices.

Validity of Proceedings for the Redemption of Bonds. If notice is given as described under the heading “Notice of Redemption to Registered Owners” above, failure of any Bondholder to receive such notice, or any defect in the notice, will not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

Rescission of Conditional Redemption; Cancellation of Optional Redemption. The Trustee will rescind any Conditional Redemption if the Trustee has not received on or before the Redemption Date an Advance under the Credit Facility in an amount sufficient to pay the principal of and accrued interest on any Bond being optionally redeemed or the Trustee has received a direction to cancel the Conditional Redemption from the Credit Provider. The Trustee will give notice of rescission by the same means as described under the heading “Notice of Redemption to Registered Owners” for the giving of notice of redemption or by Electronic Means confirmed in writing. The optional redemption will be canceled once the Trustee has given notice of rescission. Any Bonds subject to Conditional Redemption where redemption has been rescinded will 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 will constitute an Event of Default. Notwithstanding notice of redemption having been given in the manner described above, any optional redemption of Bonds will 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 will 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 will 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 the Bonds to be redeemed within a series by lot, in such manner as it determines, in its discretion, and in any event such that the Bonds remaining Outstanding are in Authorized Denominations. In the selection process (i) any Pledged Bonds Outstanding will be called for redemption before any other Bonds are called for redemption, (ii) Series A-T Bonds shall be called for redemption prior to the redemption if any Series A Bonds outstanding, and (iii) if applicable, the Bonds with the highest interest rate will be selected for redemption before any other Bonds are selected for redemption. For the purposes of this Section, Bonds which 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 Whole in Lieu of Redemption. If the Bonds are called for redemption in whole pursuant to the Indenture, all (but not less than all) of the Bonds may be purchased by the Trustee (for the account of the Borrower or the Credit Provider or their respective designee, as directed by such party) on the date which otherwise would be the Redemption Date, (i) except in the case of a redemption described under the headings “Mandatory Redemption-Casualty or Condemnation” or “-After an Event of Default under the Reimbursement Agreement” above, at the direction of the Borrower with the written consent of the Credit Provider or (ii) at the direction of the Credit Provider. Such purchase will require

notice to the Trustee by noon Eastern time at least one Business Day prior to such Redemption Date. The purchase price of the Bonds will be equal to the redemption price which would have been applicable to such Bonds on the Redemption Date. The purchase price will be paid only from Available Moneys. In the event the Trustee is so directed to purchase Bonds in lieu of redemption, no notice to the holders of the Bonds to be purchased (other than the notice of redemption otherwise required under the Indenture) will be required. The Trustee is authorized to apply to the purchase price the funds in the Redemption Account which would have been used to pay the redemption price of the Bonds.

In the event that Bonds are purchased as described in the preceding paragraph, subsequent to such purchase the Bonds may not be transferred to another registered owner without the written approval of the Issuer and only in compliance with all applicable securities laws unless a Credit Facility is then in full force and effect at the time of transfer securing the payment of the principal, redemption price or purchase price, and interest on the Bonds.

### **Purchase and Remarketing of Bonds**

Optional Tender. During any Weekly Variable Rate Period, the Trustee will purchase any Bond on behalf of and as agent for the Borrower, but solely from the sources described under the heading "Payment and Sources of Purchase Price" below, on the demand of the Beneficial Owner of such Bond. The purchase price of any Bond tendered for purchase will 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 this subsection to the Tender Agent at its Designated Office on any Business Day. Any Bondholder Tender Notice received by 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 will be the date selected by the Beneficial Owner in the Bondholder Tender Notice; provided, however, that such date is a Business Day which is at least seven days after the date of the delivery of the Bondholder Tender Notice to the Tender Agent. A Bondholder Tender Notice complies with the requirements of this subsection if it:

- (1) is accompanied by a guaranty of signature acceptable to the Tender Agent; and
- (2) 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. Subject to the provisions of the Indenture described under the heading "Book-Entry-Only" below, by delivering a Bondholder Tender Notice the Beneficial Owner irrevocably agrees 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 portion of a Bond or Bonds) for purchase on a Business Day in accordance with the provisions of the Indenture described under the heading "Optional Tender" above will also be binding on any transferee of the Beneficial Owner making such election.

Compliance with Tender Requirements. Bonds will be required to be purchased pursuant to the provisions of the Indenture described under the heading “Optional Tender” above only if the Bonds so delivered to the Tender Agent conform in all respects to the description of such Bonds in the Bondholder Tender Notice. The Tender Agent will determine in its sole discretion whether a Bondholder Tender Notice complies with the requirements of the Indenture described under the heading “Optional Tender” above and whether Bonds delivered conform in all respects to the description of the Bonds in the Bondholder Tender Notice. Such determination will 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 the holder making such election fails to deliver any of the Bonds described in the Bondholder Tender Notice as required by the provisions of the Indenture described under the heading “Irrevocability of Tender” above, 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 as described under this heading, stating that interest on such Untendered Bond ceased to accrue from 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 a new Bond or Bonds in replacement of the Untendered Bond not so delivered. The replacement of any Bond will not be deemed to create new indebtedness, but will be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

Payment and Sources of Purchase Price. The Tender Agent will make payment for any Bond tendered for purchase pursuant to the provisions of the Indenture described under the heading “Optional Tender” above 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 the Borrower.

Book-Entry-Only. Notwithstanding the above, during any period that the Bonds are Book-Entry Bonds, (i) any Bondholder Tender Notice also must (A) 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 (B) if the Beneficial Owner is other than a DTC Participant, identify the DTC Participant through whom the Beneficial Owner will direct transfer; (ii) 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; (iii) Tendered Bond(s) will be purchased without physical delivery as if such Bond(s) had been so delivered and (iv) the purchase price of such Bond(s) will be paid to DTC.

No Purchase After Acceleration. No Bonds will 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 as described in Appendix B hereto under the heading “Default Provisions and Remedies-Acceleration.”

Mandatory Tender and Purchase. The Bondholders will 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 under the heading "Payment and Sources of Purchase Price" 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 Owners of the Bonds may not elect to retain their Bonds. Mandatory Tender Dates include each Adjustment Date (even if a proposed change in Mode fails to occur), each Substitution Date. The Trustee will give notice of Mandatory Tender Dates as follows:

(1) Not less than 30 days before any proposed Adjustment Date, the Trustee will 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 10 days before any Substitution Date, the Trustee will give notice by first class mail, postage prepaid, to the Bondholders stating (A) that an Alternate Credit Facility will be substituted for the Credit Facility then in effect, (B) the proposed 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 10 days before any Extension Date, if the Trustee has not received a binding commitment to extend the applicable Alternate Credit Facility, the Trustee will give notice by first class mail, postage prepaid, to the Bondholders stating (i) the Extension Date and that no commitment to extend the Alternate 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 their Bonds if an extension of the Alternate Credit Facility is not received.

Mandatory Tender Upon Default; Notice. The Bonds will also be subject to mandatory tender on the earliest practicable date, after notice of tender has been given to Bondholders (but not less than ten nor more than 15 days after the giving of such notice) (which date will be a Mandatory Tender Date) upon receipt by the Trustee of written notice from the Credit Provider stating that an Event of Default under the Indenture, the Financing Agreement or the Reimbursement Agreement has occurred and directing that the Bonds be subject to mandatory tender rather than mandatory redemption. Immediately upon receipt by the Trustee of such written notice from the Credit Provider, the Trustee will give notice by first class mail, postage prepaid, to the owners of the Bonds stating (i) that such event has occurred, (ii) that the Bonds are required to be tendered on the Mandatory Tender Date specified in such notice, and (iii) that 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, will cease to bear interest and no longer will be considered to be Outstanding. In the event of a failure by a Bondholder to deliver its Bonds on the Mandatory Tender Date, such Bondholder 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 will sign, and the Tender Agent will 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 will not be deemed to create new indebtedness, but will be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

Payment and Sources of Purchase Price. The Tender Agent will make payment for any Bond purchased pursuant to the provisions of the Indenture described under the heading “Mandatory Tender and Purchase” above, including purchases described under the heading “Mandatory Tender and Purchase-Mandatory Tender Upon Default; Notice” above, at or before 4:00 p.m. Eastern time on the Mandatory Tender Date, 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.

Purchase Price Moneys Held in Trust. Following any Mandatory Tender Date, moneys deposited with the Tender Agent for the purchase of Bonds will be held in trust in the Bond Purchase Fund and will 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 will 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 heading will be given only to the entity designated in the Letter of Representations, as required by the provisions of the Indenture described under the heading “Redemption-Notice of Redemption to Registered Owners” above and (ii) it will not be necessary for Bond(s) to be physically delivered on the date specified for purchase of such Bond(s), but such purchase will be made as if such Bond(s) had been so delivered, and the purchase price of such Bond(s) will be paid to DTC.

### **Book-Entry Only**

The information in this section concerning The Depository Trust Company (“DTC”) and DTC’s Book-Entry System has been obtained from DTC. None of the Issuer, Fannie Mae or the Borrower makes any representation or warranty or take any responsibility for the accuracy or completeness of such information. **So long as Cede & Co., as nominee of DTC, is the registered owner of the Bonds, references herein to the Bondholders or holders or registered owners or owners of the Bonds mean Cede & Co. and not the beneficial owners of the Bonds.**

DTC will act as securities depository for the Bonds. The Bonds 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 Bond certificate will be issued for each maturity of the Bonds, each in the aggregate Principal Amount of such maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants (the “Direct Participants”) deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Direct Participants’ accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants

include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and 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 securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the "Indirect Participants"). The rules applicable to DTC and its Direct and Indirect Participants are on file with the Securities and Exchange Commission.

Purchases of interests in Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "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, but Beneficial Owners are 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 Owners entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the Book-Entry System for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or other such name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or other such nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

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.

Redemption notices shall be sent to Cede & Co. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Bonds. 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 the Bonds are credited on the Record Date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Issuer, or the Paying Agent and Registrar on payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on a payment date. 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, the Paying Agent and Registrar, the Borrower 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 dividends to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer and/or the Paying Agent and Registrar, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

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

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

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

NEITHER THE ISSUER, THE TRUSTEE NOR FANNIE MAE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO: THE BONDS; THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT IN RESPECT OF THE PRINCIPAL, INTEREST OR REDEMPTION PRICE OF THE BONDS; ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN TO BONDHOLDERS UNDER THE INDENTURE; THE SELECTION BY DTC OR ANY DTC PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; OR ANY OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

### **Remarketing Agent**

Pursuant to a Remarketing Agreement executed and delivered with respect to the Bonds, dated as of December 1, 2002 (the "Remarketing Agreement"), by and between Newman & Associates, Inc. (the "Remarketing Agent") and the Borrower, the Remarketing Agent has been appointed to serve as remarketing agent for 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.

## ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the sale of the Bonds and certain other moneys are expected to be applied approximately as follows:

### SOURCES:

Series A Bond Proceeds	\$10,500,000
Series A-T Bond Proceeds	<u>335,000</u>
Total Sources	\$10,835,000

### USES:

Redeem Prior Bonds	\$10,500,000
Underwriter's Discount	59,928
Other Costs of Issuance	<u>275,072</u>
Total Uses	\$10,835,000

## SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

### Pledge of the Trust Estate

To secure the payment of the principal of and interest and any premium on, and the purchase price of, the Bonds according to their tenor and effect, to secure, on a parity basis, all obligations owed to the Credit Provider under the Credit Facility Documents and the Loan Documents, and to secure the performance and observance by the Issuer of the covenants expressed or implied in the Indenture and in the Bonds, the Issuer has absolutely and irrevocably pledged and assigned the property described in the following paragraphs (1) through (5) to the Trustee, for the benefit of the Bondholders and to the Credit Provider, as their interests may appear, subject to the Assignment and the provisions of the Indenture permitting the application of such property for the purposes set forth in the Indenture:

(1) 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;

(2) all rights to receive payments on the Note and under the other Loan Documents, including all proceeds of insurance or condemnation awards;

(3) 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 (including within such exclusion Investment Income earned on amounts on deposit in the Costs of Issuance Fund and the Rebate Fund);

(4) all funds, moneys and securities and any 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

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

### **Credit Facility**

In addition to the other security provided under the Indenture, credit enhancement and liquidity support for the Bonds will be provided by the Credit Facility, which the Credit Provider will deliver to the Trustee on the Closing Date. The form of the Credit Facility is attached as Exhibit G.

Information regarding the Credit Provider is contained herein under the caption "FANNIE MAE."

### **Indenture Provisions Relating to Credit Facility; Replacement Credit Facility; Alternate Credit Facility**

Credit Facility Requirement. So long as the Bonds bear interest at the Weekly Variable Rate, one or more Credit Facilities providing credit support for the Loan or the Bonds and liquidity support for the Bonds must be in effect. When delivered, each Credit Facility is required to satisfy the following requirements:

(a) the Credit Facility is required to be in an amount equal to the aggregate principal amount of the Bonds Outstanding from time to time plus the Interest Requirement;

(b) the Credit Facility is required to provide for payment in immediately available funds to the Trustee, upon receipt of the Trustee's request for such payment with respect to any Interest Payment Date, purchase date or redemption date pursuant to the Indenture;

(c) unless waived by the Issuer in its sole discretion, the Credit Facility must result in the Bonds receiving a short-term rating in the highest rating category of each Rating Agency or a long-term rating in one of the two highest rating categories of each Rating Agency, or both, as applicable for the Mode then in effect; and

(d) if the Credit Facility in effect is an Alternate Credit Facility, the Credit Facility must satisfy the requirements the Indenture.

Requests for Advances Under Credit Facility. The Trustee will 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 Annual Fee is due and not paid by the Borrower pursuant to the Financing Agreement. The Trustee will not request, and will 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 held by the Borrower or any Affiliate of the Borrower, (ii) premium that may be payable upon the redemption of any Bond or (iii) interest that may accrue on any Bond 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 will 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 will 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 will accept any Alternate Credit Facility delivered to the Trustee in substitution for the Credit Facility then in effect if the conditions set forth in the Indenture are satisfied.

The Trustee will give notice to the Bondholders of the substitution of an Alternate Credit Facility for the Credit Facility then in effect as provided in the Indenture and described under the heading "THE BONDS-Purchase and Remarketing of Bonds-Mandatory Tender and Purchase" herein. On the Substitution Date, the Trustee will, if necessary, request an Advance under the Credit Facility being replaced and will not surrender such Credit Facility until all requests thereon have been honored.

THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE PERIOD THAT THE BONDS BEAR INTEREST AT THE WEEKLY VARIABLE RATE AND ARE SECURED BY THE CREDIT FACILITY. INVESTORS SHOULD NOT RELY ON THIS OFFICIAL STATEMENT IF THE INTEREST RATE ON THE BONDS IS ADJUSTED TO A RESET RATE OR TO THE FIXED RATE, OR IF THE BONDS ARE SECURED BY A REPLACEMENT CREDIT FACILITY OR AN ALTERNATE CREDIT FACILITY.

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 AGENCY OR INSTRUMENTALITY THEREOF 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"), ANY OF THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY

CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO TAXING POWER.

### **THE ISSUER**

The Issuer is a joint powers authority duly organized and existing under the laws of the State of California. The Issuer was formed pursuant to the terms of a Joint Powers Agreement, dated as of April 1, 1990, as amended as of September 18, 1990 and June 9, 1992, and the Joint Exercise of Powers law of the State (constituting Chapter 5, commencing with Section 6500, of Division 7 of Title 1 of the California Government Code), 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"), ANY OF THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE ISSUER, ABAG, OR THE MEMBERS OF THE ISSUER OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO TAXING POWER.

### **THE BORROWER AND THE PROJECT**

The following information has been provided by the Borrower for use herein. While the information is believed to be reliable, neither the Issuer, the Underwriter, Fannie Mae, 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.

#### **The Borrower**

The Borrower under the Loan is Amber Court Associates, a California limited partnership, whose managing general partner is Adams and Graves, a California general partnership, comprised of Richard M. Adams and Darrell E. Graves, Jr. Mr. Adams has an 80% interest in the general partnership and Mr. Graves has the remaining 20%. Adams and Graves is currently the general partner of eight other limited partnerships which own income real property. Mr. Adams and Mr. Graves have developed thirteen multi-family rental apartments projects in the San Francisco Bay area over the past twenty-five years.

Mr. Adams has over 40 years of experience in the housing field, initially as an attorney, specializing in real property law and legal aspects of federally assisted housing. From 1967 to 1978, Mr. Adams served as an officer, director and stockholder of Terra California, the developer of Leisure World in Walnut Creek. Mr. Adams is also Chairman of the Board of

Directors of the Marin County Housing Development Finance Corporation, a nonprofit corporation founded by the Marin County Housing Authority to finance and promote low and moderate income housing in Marin county.

Darrell E. Graves, Jr., has over 35 years experience in the housing field. He began his career in 1964 with Rossmoor Corporation where his responsibilities included coordination of the developer/contractor's interest in the Rossmore Leisure World project in Walnut Creek. Mr. Graves subsequently served as Administrative Vice President of Terra California; as Regional Manager, Northern California for Kaiser Pacific Development Corporation; and as Vice President and General Manager for Highland Associates.

The Borrower, through its managing general partner, Adams and Graves, and its management affiliate Lexington Associates, Inc. has been responsible for the operation and management of the Project since its construction. The objective and purpose of the Borrower is to own and operate the Project for the production of income and to realize any ultimate appreciation in the value of the Project.

In addition to the managing general partner of the Borrower described above, the Borrower has another general partner, Argonaut Capital Corporation, a California corporation ("Argonaut"). Argonaut was incorporated in 1971, and its sole shareholder, president and principal officer is J. Lawrence Onderdonk. Argonaut has been primarily engaged in the private placement of limited partnership interests in newly developed apartment projects.

A principal of the Underwriter for the Bonds, Richard H. Clark, currently owns a 2.91% limited partnership interest in the Borrower.

### **Expiration of Borrower, Early Redemption**

The current partnership agreement of the Borrower expires on December 31, 2027. The Deed of Trust and the Reimbursement Agreement each contain provisions to the effect that an event of default will occur under each such document if the Borrower does not provide evidence acceptable to Fannie Mae by December 15, 2025 of the extension of the term of the limited partnership agreement of the Borrower to a date no earlier than December 15, 2034. If such an event of default occurs, the Bonds may be subject to redemption prior to maturity. See "THE BONDS – Redemption."

### **The Project**

The Project is located in Fremont, California, on the northeast side of Fremont Boulevard, approximately 1/2 mile southeast of the intersection of Fremont Boulevard and the Nimitz Freeway. The Project consists of 168 units located on approximately 9.44 acres (with a density of 19.9 units per acre) in 20 separate two-story, wood frame structures. The buildings have exterior walls of drop composition, horizontal siding and asphalt shingle roofs. There are 168 covered parking spaces and an equal number of open parking spaces.

The mix of dwelling units in the Project is as follows:

<u>Quantity</u>	<u>Unit Type</u>	<u>Square Footage</u>
48	1 Bedroom, 1 Bath	620
8	1 Bedroom, 1 Bath	692
40	2 Bedroom, 1 Bath	848
42	2 Bedroom, 1 Bath	893
20	2 Bedroom, 2 Bath	913
10	2 Bedroom, 2 Bath	1,099

Each apartment unit contains either a patio or balcony, an electric range and refrigerator, air conditioning equipment, kitchen exhaust fan, dishwasher, garbage disposal, hot water heater, washer/dryer, cable television hook-up, carpets and drapes. Fourteen of the one bedroom and 30 of the two bedroom units also have fireplaces. Common amenities include a swimming pool, a tot lot play area, and a community structure adjacent to the pool containing a weight room, sauna, restrooms, office and storage area.

The Project is subject to the restrictions of the Regulatory Agreement, which restrict the occupancy, use, operation and any sale or transfer of the Project. See "APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT."

The approximate average annual occupancy of the Project during calendar year 1999 was 98%, during calendar year 2000 was 99% and during calendar year 2001 was 98%. As of October 31, 2002 (the most recent date for which occupancy information is available), the Project was approximately 96% occupied.

The table below sets forth a brief summary of net operating income history of the Project for the years ended December 31, 1999, 2000 and 2001 as prepared by the Borrower based on unaudited financial information:

	<u>Calendar Year Ending</u>		
	<u>2001</u>	<u>2000</u>	<u>1999</u>
Income	\$2,261,133.20	\$2,024,446.79	\$1,921,180.40
Operating Expenses	(771,988.29)	(721,815.13)	(687,852.66)
Debt Service and Financial Expenses	(667,632.78)	(779,141.20)	(701,183.42)
Net Cash Flow	<u>\$821,512.13</u>	<u>\$253,490.46</u>	<u>\$532,144.32</u>

On the date that the Bonds are being issued, Capri Capital Finance, LLC, will originate a separate loan to the Borrower in the initial amount of \$4,007,000 (the "Subordinate Loan"), which will be funded from sources other than Bond proceeds. The Subordinate Loan will be evidenced by a note (the "Subordinate Note") and will be secured by a deed of trust (the "Subordinate Mortgage") on the Project, and the Subordinate Note and Subordinate Mortgage will be purchased by Fannie Mae. Neither the Subordinate Note nor the Subordinate Mortgage are part of the Trust Estate pledged to the repayment of the Bonds. An Event of Default under and as defined in the Subordinate Mortgage will constitute an event of default under the Reimbursement Agreement. See "APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE REIMBURSEMENT AGREEMENT."

## **The Operator**

The Project has been managed since inception by Lexington Associates Inc., a California corporation, formed in 1975, which is wholly owned by Richard M. Adams, the corporation

currently employs 55 people in connection with the management of 1,401 units in 11 projects in the San Francisco Bay area.

The President of Lexington Associates Inc. is Richard M. Adams. Vice Presidents are Rosanna Radding and Elvera Stewart, assisted by Grace Kinajil, Controller, and Chief Financial Officer Victoria Turk.

### **Limited Recourse to Borrower**

The Borrower and its partners will not (subject to certain exceptions to nonrecourse liability set forth in the Note and the Security Instrument) be personally liable for payments on the Note, the payments on which are to be applied to pay the principal of and interest on the Bonds; nor will the Borrower (subject to certain exceptions to nonrecourse liability set forth in the Note and the Security Instrument) be personally liable under the other documents executed in connection with the issuance of the Bonds and the making of the Loan. Furthermore, no representation is made that the Borrower will have substantial funds available for the Mortgaged Property. Accordingly, neither the Borrower's financial statements nor those of its partners are included in this Official Statement.

### **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 Underwriter, the Borrower, the Loan Servicer or 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 \$758 billion of mortgage loans as of September 30, 2002. 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, 2002, Fannie Mae's core capital was \$26.5 billion. 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. Information on Fannie Mae and its financial condition is contained in Fannie Mae's Information Statement ("Information Statement") dated April 1, 2002, and Supplement thereto dated May 15, 2002, August 9, 2002 and November 13, 2002 (and any later supplement to or update of such Information Statement). Copies of the most recent Information Statement, any Supplements to the Information Statement and Fannie Mae's most recent annual report to stockholders and proxy statement are available without charge from the Office of Investor Relations, Fannie Mae, 3900 Wisconsin Avenue, NW, Washington, DC 20016 (telephone: 202/752-7000) are also available by accessing Fannie Mae's world wide web site at <http://www.fanniemae.com/ir/infostatements>.

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 Facility and exercising the rights reserved to it in the Indenture and the Reimbursement Agreement.

### **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 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.

Capri Capital Finance, LLC, a Delaware limited liability company (the "Loan Servicer"), will provide certain servicing functions on behalf of Fannie Mae with respect to the Loan pursuant to applicable Fannie Mae requirements and will be paid a fee for its services.

The selection of the Loan Servicer is in the sole and absolute discretion of Fannie Mae. The servicing arrangements between the Loan Servicer and Fannie Mae can be amended or terminated 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 has its headquarters in Arlington, Virginia. The Loan Servicer is an approved DUS seller/Loan Servicer under Fannie Mae's Delegated Underwriting and Servicing product line.

### **THE TRUSTEE**

U.S. Bank, N.A., will act as Trustee pursuant to the Indenture. The obligations of the Trustee are described in the Indenture. The Trustee has undertaken only those duties and obligations that are expressly set forth in the Indenture. The Trustee has not independently passed upon the validity of the Bonds, the security of the payment therefor, the value or condition of any assets pledged to the payment thereof, the adequacy of the provisions for such payment, the status for federal or state income tax purposes of the interest on the Bonds, or the investment quality of the Bonds. Except for the contents in this section, the Trustee has not reviewed or participated in the preparation of this Official Statement and has assumed no

responsibility for the nature, content, accuracy or completeness of the information included in this Official Statement.

## **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 SPECIAL OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM AND SECURED BY THE PLEDGE OF REVENUES PURSUANT TO THE INDENTURE. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE ISSUER TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS.

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 AGENCY OR INSTRUMENTALITY THEREOF 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 Series A 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-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 Series A 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 Series A 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-Default Provisions and Remedies," "APPENDIX C-SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT-Events of Default and Remedies."

### **TAX MATTERS**

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject to the qualifications set forth below, under existing law, the interest on the Series A Bonds is excluded from gross income for federal income tax purposes, except during any period while a Series A Bond is held by a "substantial user" of the facilities financed by the Series A Bonds or a "related person" within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that for purposes of computing the alternative minimum tax imposed on corporations (as defined for federal tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the Issuer and the Borrower comply with all requirements of the 1954 Code and the Internal Revenue Code of 1986 that must be satisfied subsequent to the issuance of the Series A Bonds in order that interest 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 Series A Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Series A Bonds. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Series A Bonds other than as expressly described above.

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.

Interest on the Series A-T Bonds is subject to all applicable federal taxation.

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.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as Exhibit A.

## LEGAL MATTERS

Legal matters incident to the authorization, issuance and sale of the Bonds are subject to the approving opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, as Bond Counsel. A complete copy of the proposed forms of opinion of Bond Counsel is attached hereto as Appendix A. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement.

Certain legal matters will be passed upon for the Issuer by Sidley Austin Brown & Wood LLP, for the Borrower by Kutak Rock LLP, Scottsdale, Arizona; for Fannie Mae by its Legal Department and by O'Melveny & Myers LLP, Fannie Mae's Special Counsel; and for the Underwriter by its counsel, Quint & Thimmig LLP, San Francisco, California. Payment of the fees and expenses of certain of these counsel is contingent upon issuance and delivery of the Bonds.

The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the constitutional powers of the State and the United States of America and bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

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 a legal opinion, the opinion giver does not become an insurer or guarantor of that 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.

The remedies available to the bondholders upon a default under the Indenture or Financing Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (the federal bankruptcy code), the remedies provided in the Indenture and the Financing Agreement may not be readily available or may be limited.

## NO LITIGATION

### **The Issuer**

There is not now pending or, to the knowledge of the Issuer, threatened any proceeding or litigation against the Issuer seeking to restrain or enjoin the issuance or delivery of the Bonds or questioning or affecting the validity of the Bonds or the proceedings and authority under

which they are to be issued. Neither the creation, organization or existence nor the title of the present officers of the Issuer to their respective offices is being contested.

### **The Borrower**

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

### **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 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 member 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, the Regulatory Agreement and the Security Instrument 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 and other laws relating to creditor's rights.

### **RATINGS**

It is a condition to the issuance and delivery of the Bonds that Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (the "Rating Agency"), assign 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 any 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**

RBC Dain Rauscher Inc. (the "Underwriter") has agreed to purchase the Bonds and will be paid an underwriter's fee equal to \$59,928.00, from which the Underwriter will pay certain 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.

The Borrower has agreed to indemnify the Underwriter against certain potential losses arising from the Underwriter's Sale of the Bonds.

### **MISCELLANEOUS**

Copies of the documents described herein are on file at the office of the Trustee and are available for inspection upon request.



## APPENDIX A

### PROPOSED FORM OF BOND COUNSEL OPINION

December 11, 2002

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

**OPINION:** \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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Members of the Issuer Council:

We have acted as bond counsel in connection with the issuance by the ABAG Finance Authority for Nonprofit Corporations (the "Issuer") of \$10,500,000 ABAG Finance Authority for Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A (the "Series A Bonds") and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T (the "Series A-T Bonds," and together with the Series A Bonds, the "Bonds") pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code and Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Act"), and a Trust Indenture, dated as of December 1, 2002 (the "Indenture"), by and between the Issuer and U.S. Bank, N.A., as trustee, approved by the Issuer by a resolution adopted December 6, 2002. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

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

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

1. The Issuer is a joint exercise of powers agency, duly created 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. 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. The interest on the Series A Bonds is excluded from gross income for federal income tax purposes, except during any period wherein a Series A Bond is held by a "substantial user" of the facilities financed by the Series A Bonds or a "related person" within the meaning of Section 103(b)(13) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The opinions set forth in the preceding sentence are subject to the condition that the Issuer and the Borrower comply with all requirements of the 1954 Code and the Internal Revenue Code of 1986 that must be satisfied subsequent to the issuance of the Series A 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 Series A Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Series A Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Series A 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

#### 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 with respect to the statutory authority regarding the issuance and delivery of the Bonds, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented, and with respect to the statutory provisions regarding the occupancy provisions of the Project, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California in effect as of February 12, 1985.

“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.

“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 the Credit Provider and of the Trustee to such documents and rights as set forth in the Assignment.

“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 and agreed to by the Borrower, as it may be amended, supplemented or restated from time to time.

“Authorized Attesting Officer” means the Secretary of the Issuer, or such other officer or official of the Issuer who, in accordance with the laws of the State, the bylaws or other governing documents of the Issuer, or practice or custom, regularly attest or certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“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 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 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 and the Credit Provider) a written certificate revoking such person’s authority to act in such capacity.

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

“Authorized Officer” means the chairperson, vice chairperson, secretary and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds.

“Available Moneys” means, as of any date of determination, any of (i) the proceeds of the Bonds, (ii) 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), (iii) moneys received by the Trustee pursuant to the Credit Facility, (iv) 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 544, 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code; and (v) Investment Income derived from the investment of moneys described in clause (i), (ii), (iii) or (iv).

“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,” collectively, means the Issuer’s Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A in the original aggregate principal amount of \$10,500,000 and the Issuer’s Variable Rate Demand Taxable Multifamily Housing Revenue Bonds (Amber Court Apartments) 2002 Series A-T in the original aggregate principal amount of \$335,000.

“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, 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.

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

“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, 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, 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.

“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.

“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 Amber Court Associates, a California limited partnership.

“Borrower Documents” means the Bond Documents to which the Borrower is a party, the Credit Facility 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.

“Business Day” means any day other than (i) a Saturday or a Sunday, (ii) 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, (iii) any day on which banking institutions located in the city or cities in which the Designated Office of the Trustee or the Remarketing Agent or the Loan Servicer is located are required or authorized by law or executive order to close, (iv) prior to the Fixed Rate Adjustment Date, a day on which the New York Stock Exchange is closed, or (v) 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 December 11, 2002, as 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 1954, as amended (“1954 Code” and the Internal Revenue Code of 1986, as amended (“1986 Code”), in each case to the extent made applicable to matters relating to the Bonds and the Mortgaged Property by Section 1313(a) of the Tax Reform Act of 1986; each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) 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 under the heading “THE BONDS-Redemption-Rescission of Conditional Redemption; Cancellation of Optional Redemption” herein.

“Costs of Issuance” means:

(a) the fees, costs and expenses of (i) the Issuer, 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, (vi) the Credit Provider and the Credit Provider’s counsel, (vii) the Borrower’s counsel and the Borrower’s financial advisor, if any, and (viii) the Rating Agency;

(b) costs of printing the offering documents relating to the sale 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 Fund” means the Costs of Issuance Fund created by the Indenture.

“Credit Facility” means the Credit Enhancement Instrument, dated as of the Closing Date, issued by Fannie Mae to the Trustee, or any Alternate Credit Facility in effect at the time, as any such facility may be amended, supplemented or restated from time to time.

“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 Hedge Documents, the Hedge Reserve Escrow Account Security Agreement, the Hedge Security 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.

“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 pursuant to the provisions of the Financing Agreement.

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

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

“Electronic Means” means a facsimile transmission 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.

“Facility Fee” has the meaning given to that term in 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 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.

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

“Fixed Rate” means the rate of interest borne by the Bonds of each Issue 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 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 Security Agreement” means the Hedge Reserve Escrow Account Security Agreement, 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, 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.

“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 Category” means, with respect to an Investment, that 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.

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

“Interest Payment Date” means (i) during any Weekly Variable Rate Period, the 15th day of each calendar month commencing January 15, 2003; (ii) during any Reset Period and during the Fixed Rate Period each June 15 and December 15 following the Adjustment Date, provided that the first Interest Payment Date during any such period may only occur on a date which is at least 30 days after the Adjustment Date; (iii) each Adjustment Date; (iv) for Bonds subject to redemption in whole or in part on any date, the date of such redemption, (v) the Maturity Date and (vi) for all Bonds any date determined pursuant to the Indenture.

“Interest Requirement” means (i) 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 and (ii) during a Reset Period or the Fixed Rate Period, 210 days interest at, respectively, the Reset Rate or the Fixed Rate, as the case may be, on the basis of a year of 360 days of twelve 30-day months; or, in the case of either (i) or (ii), 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 Income” means the earnings, profits and accreted value derived from the investment of moneys pursuant to the Indenture as described in this Appendix under the heading “Investments.”

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

“Issuer Documents” means the 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 specified in the Financing Agreement, payable by the Borrower under the Financing Agreement.

“LIBOR” means, with respect to any Weekly Variable Rate Period, the per annum rate for deposits in U.S. dollars for one month which appears on the Bloomberg British Bankers’ Association Back-up rate to Taxable Rate Official BBA LIBOR Fixings Page (the “Official BBA LIBOR Fixings Page” as defined below) as of 11:00 a.m., London, England time, on the second Business Day preceding the beginning of each Weekly Variable Rate Period (in each case, a “LIBOR Determination Date”), rounded, if necessary, upward to the nearest one-hundredth of one percent (0.01%). If such rate does not appear on the Official BBA LIBOR Fixings Page, LIBOR will be determined on such date as described in the paragraph below. “Official BBA LIBOR Fixings Page” means the display designated as page 1 of the “Official BBA LIBOR Fixings” on the Bloomberg Financial Markets Commodities News Service (or such other page as may replace the Official BBA LIBOR Fixings Page on that service, or a comparable service, for the purpose of displaying London interbank offered rates of major banks). If on such LIBOR Determination Date fewer than two offered rates appear on the Official BBA LIBOR Fixings Page, the Trustee will request the principal London office of each of two major banks (other than the Trustee or a Trustee-owned or Trustee-affiliated bank) that are engaged in transactions in the London interbank market, as selected by the Trustee with the approval of the Credit Provider, to provide the Trustee with its offered quotation for U.S. dollar deposits for one month to prime banks in the London interbank market as of 11:00 a.m., London, England time, on such date. If at least two such major banks provide the Trustee with such offered quotations, LIBOR on such date will be the arithmetic mean rounded, if necessary, upward to the nearest one-hundredth of one percent (0.01%) of such quotations. If on such date fewer than two of the major banks provide the Trustee with such an offered quotation, LIBOR on such date will be the arithmetic mean rounded, if necessary, upward to the nearest one-hundredth of one percent (0.01%) of the offered rates that two leading banks in the City of New York (other than the Trustee or a Trustee-owned or Trustee-affiliated bank), as selected by the Credit Provider, are quoting as of 11:00 a.m., New York City time, on such date to leading European banks for U.S. dollar deposits for one month; provided, however, that if two such New York banks are not quoting as described above, LIBOR will be the LIBOR applicable to the immediately preceding Weekly Variable Rate Period.

“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 repay the Prior Loan and cause the refunding of the Prior Bonds.

“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.

“Mandatory Tender Date” means any date on which Bonds are required to be tendered pursuant to the Indenture as described herein under the heading “THE BONDS-Purchase and Remarketing of Bonds-Mandatory Tender and Purchase,” including any 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-Purchase and Remarketing of Bonds-Mandatory Tender and Purchase-Mandatory Tender Upon Default; Notice.”

“Maturity Date” means December 15, 2032 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 percent per annum; provided, however, that the Maximum Rate may be increased if the Trustee receives (i) 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, (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 Series A 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.

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

“Moody’s” means Moody’s Investors Service, Inc., 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 December 1, 2002, 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.

“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 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 provisions of the Indenture described in this Appendix under the heading “Discharge of Lien and Security Interest”; 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) (i) 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 (A) the Qualified Financial Institution’s unsecured short-term obligations are rated in the Highest Rating Category or (B) 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 whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long-term obligations are rated in the 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 are 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 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. 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.

(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 paragraphs (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 rated 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 and each Rating Agency.

Permitted Investments will 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 will 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 Provisions of the Indenture described in this Appendix under the heading "Discharge of Lien and Security Interest," 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.

(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, U.S. Bank, N.A., 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.

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

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

“Principal Reserve Amount” means \$2,100,000.

“Principal Reserve Fund” means the Principal Reserve Fund created 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.

“Prior Bonds” means the City of Fremont, California Variable Rate Demand Multifamily Refunding Revenue Bonds (Amber Court Apartments) 1990 Issue A issued pursuant to the Prior Indenture.

“Prior Indenture” means the Indenture of Trust, dated as of September 1, 1990, as amended, supplemented or restated to the Closing Date, pursuant to which the Prior Bonds were issued.

“Prior Loan” means the loan with respect to the Mortgaged Property funded with proceeds of the Prior Bonds.

“Prior Mortgage” shall have the meaning ascribed to the term “Deed of Trust” in the Prior Indenture.

“Prior Trustee” means U.S. Bank, N.A., the trustee under the Prior Indenture.

“Qualified Financial Institution” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) 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, (iv) 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, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) 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 (vii) 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 (i) with respect to the Weekly Variable Rate, Wednesday of each week, or if such Wednesday is not a Business Day the first Business Day preceding such Wednesday; provided, however, that upon any adjustment to the Weekly Variable Rate Mode from a Reset Rate, the first Rate Determination Date will be the Business Day prior to the Adjustment Date, and (ii) with respect to any Reset Rate and the Fixed Rate, the date selected by the Remarketing Agent which date must be a Business Day not less than five Business Days prior to the Adjustment Date.

"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 and 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 Fund" means the Rebate Fund created under the Indenture.

"Record Date" means, with respect to any Interest Payment Date, (a) if the Bonds bear interest at the Weekly Variable Rate, the Business Day before the Interest Payment Date and (b) 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 the date of the Indenture, by 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, by 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 & Associates, Inc., or any successor as Remarketing Agent designated in accordance with the Indenture.

“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, 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 10 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 of each Issue as determined in accordance with the Indenture.

“Revenue Fund” means the Revenue Fund created 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.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns, and any replacement securities depository appointed under the Indenture.

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

“Security Instrument” means the Multifamily Deed of Trust Assignment of Rents and Security Agreement, dated as of December 1, 2002, together with all riders and exhibits, securing the Note and the obligations of the Borrower to the Credit Provider under the Credit Facility Documents, executed by the Borrower with respect to the Mortgaged Property, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

“Series A Bonds” means the Issuer’s Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A issued hereunder in the original aggregate principal amount of \$10,500,000.

“Series A-T Bonds” means the Issuer’s Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T issued hereunder in the original aggregate principal amount of \$335,000.

“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 Payment Date” means any of the dates on which any of the Bonds matures or is subject to redemption through the application of Sinking Fund Payments as set out in a Sinking Fund Schedule.

“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 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 as described in this Appendix under the heading “Default Provisions and Remedies-Nondefault and Prohibition of Mandatory Redemption Upon Tax Event.”

“Tender Agent” means the Tender Agent named in the Indenture 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 for purchase pursuant to the provisions of the Indenture described under the heading “THE BONDS-Purchase and Remarketing of Bonds” herein.

“Third Party Fees” has the meaning given to that term in the Indenture.

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

“Trustee’s Annual Fee” means the annual continuing trust administration fee of the Trustee as provided in the Financing Agreement, computed and payable semiannually in advance in equal installments on each Interest Payment Date.

“UCC” means the Uniform Commercial Code of the State as in effect now or in the future, whether or not such Uniform Commercial Code is applicable to the parties or the transactions.

“Underwriter” means RBC Dain Rauscher Inc.

“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 provisions of the Indenture described under the heading “THE BONDS-Weekly Variable Rate Mode.”

“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.

### **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;
- (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 will hold and administer the Funds and Accounts in accordance with the Indenture.

### **Loan Fund**

Amounts on deposit in the Loan Fund shall be disbursed by the Trustee to fund the Loan upon satisfaction of the conditions to delivery of the Bonds as provided in the Indenture. Upon delivery of the Bonds, the Trustee shall transfer the amount on deposit in the Loan Fund to the Prior Trustee for the redemption of the Prior Bonds.

### **Revenue Fund-Interest Account**

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

- (a) moneys provided by or on behalf of the Borrower relating to an interest payment under the Note;
- (b) all Investment Income on the Funds and Accounts (except that Investment Income earned on amounts on deposit in the Loan Fund, the Rebate Fund, the Costs of Issuance Fund, and the Principal Reserve Fund will be credited to and retained in those respective Funds or Accounts); and
- (c) 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 as described below under the heading “Bond Purchase Fund.”

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:

(a) on each Interest Payment Date during any Reset Period or Fixed Rate Period, Redemption Date and date of acceleration of the Bonds, the Trustee will disburse to the Credit Provider the amount of any Advance under the Credit Facility relating to the payment of interest on the Bonds, or in the event of a Wrongful Dishonor, until such Wrongful Dishonor is cured, to the Bondholders an amount equal to the interest due on the Bonds on such date;

(b) if the Credit Provider or the Loan Servicer gives a 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 or the Loan Servicer under the Loan Documents, the Bond Documents or the Credit Facility Documents remains unpaid, then the Trustee will 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 or the Loan Servicer, as applicable, but not in an amount which exceeds the amount stated as unpaid by the Credit Provider or the Loan Servicer, as applicable, in its notice to the Trustee; and

(c) unless there is (i) a deficiency in the Principal Reserve Fund, Fees Account or the Rebate Fund or (ii) 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 will disburse to the Borrower the Investment Income earned on 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 will 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.

#### **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 will be held in a segregated subaccount in the Redemption Account;

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

(c) moneys transferred from the Principal Reserve Fund pursuant to the provisions of the Indenture described under the heading "Principal Reserve Fund" below; and

(d) 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 will 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 will disburse to the Bondholders, from the segregated subaccount in the Redemption Account, Available Moneys in an amount sufficient to pay such premium.

Disbursements from the Redemption Account for Sinking Fund Payments. Provided that no notice of optional redemption has been sent to Bondholders on or prior to the 30th day preceding a Sinking Fund Payment Date, at the written instruction of the Issuer (acting through an Authorized Officer) at the direction of the Borrower and with the prior written consent of the Credit Provider, the Trustee shall apply any moneys accumulated in the Redemption Account on or prior to the 30th day preceding such Sinking Fund Payment Date to the purchase of Bonds of the maturity for which such Sinking Fund Payment was established at prices (including any brokerage and other charges) not exceeding the redemption price for such Bonds plus accrued and unpaid interest to the date of purchase, such purchase to be made in such manner as the Trustee (after consultation with the Issuer, the Borrower and the Credit Provider) determines. The Borrower shall provide a copy of such direction to the Loan Servicer concurrently with delivery to the Trustee.

Upon the purchase of any Bond described in the above paragraph, all such Bonds will be cancelled by the Trustee and an amount equal to the principal amount of the Bonds so purchased will be credited toward the Sinking Fund Payment next due with respect to the Bonds of such maturity. In the event the Trustee is able to purchase Bonds at a price less than the redemption price at which such Bonds were to be redeemed, then, presuming no notice of redemption has been sent to Bondholders, after payment by the Trustee of the purchase price of such Bonds and after payment of any other amounts due on the due date of such Sinking Fund Payment, the Trustee shall pay an amount not greater than the difference between the amount of such purchase price and the amount of such redemption price to, or at the direction of, the Borrower.

As soon as practicable after the 30th day preceding the due date of any such Sinking Fund Payment, and otherwise as provided in the Indenture, the Trustee shall give notice of redemption of Bonds in such amount as is necessary to complete the retirement of a principal amount of Bonds equal to the unsatisfied balance of such Sinking Fund Payment. The Trustee shall call such Bonds for redemption whether or not it then has moneys in the Redemption Account sufficient to pay the applicable redemption price of the Bonds to be redeemed on the Redemption Date. The Trustee shall pay the amount required for the redemption of the Bonds called for redemption from the Funds specified in the Indenture, in the order of priority indicated, and such amount will be applied by the Trustee to such redemption.

### **Revenue Fund-Credit Facility Account**

Deposits into the Credit Facility Account. The Trustee will deposit into the Credit Facility Account all Advances under the Credit Facility, except for (i) Advances on account of the Issuer's Annual Fees and (ii) Pledged Bond Advances. That portion of any Advance on account of Issuer's Annual Fee will be deposited into the Fees Account. Pledged Bond Advances shall be deposited into the Bond Purchase Fund pursuant to the provisions of the Indenture described under paragraph (b) under the heading "Bond Purchase Fund-Deposits into Bond Purchase Fund" below. No other moneys will be deposited into the Credit Facility Account and the Credit Facility Account will be maintained as a segregated account and moneys therein will not be co-mingled with any other moneys held under the Indenture. The Credit Facility Account will 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 will 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 will 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 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 will be immediately refunded to the Credit Provider.

### **Revenue Fund-Fees Account**

Deposits into the Fees Account. The Trustee shall deposit into the Fees Account the (i) payments made by the Borrower under the Financing Agreement attributable to the Issuer's Annual Fee, and the fees and expenses of the Trustee, the Tender Agent, the Remarketing Agent and the Rebate Analyst (collectively, "Third Party Fees"), and (ii) amounts derived from the Credit Facility for the payment of the Issuer's Annual Fee.

Disbursements From the Fees Account. On any date on which any amounts are required to pay any Third Party Fees, such amounts will 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 Annual Fee when due. In the event the amount in the Fees Account is insufficient to pay such Third Party Fees, the Trustee will make written demand on the Borrower for the amount of such insufficiency and, pursuant to the terms of the Financing Agreement, the Borrower will be liable to pay the amount of such insufficiency to the Trustee within five Business Days after the date of the Trustee's written demand. The Trustee will provide notice of the insufficiency to the Loan Servicer.

No Other Claims to Trust Estate. Neither the Tender Agent, the Remarketing Agent nor the Rebate Analyst will have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to the provisions of the Indenture described under the heading "Deposits into the Fees Account" above into the Fees Account specifically for such Person. Except as otherwise described under the headings "Disposition of Remaining Moneys" and "Discharge of Lien and Security Interest-Payment of Outstanding Amounts," the Issuer will not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to the provisions of the Indenture described under the heading "Deposits into the Fees Account" above into the Fees Account specifically for the Issuer. Except as otherwise described under the headings "Disposition of Remaining Moneys," "Discharge of Lien and Security Interest-Payment of Outstanding Amounts" and "Default Provisions and Remedies-Application of Moneys" below, the Trustee will not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to the provisions of the Indenture described under the heading "Deposits into the Fees Account" above 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 will deliver the Costs of Issuance Deposit to the Trustee. On the Closing Date, the Trustee will deposit or transfer, as applicable, the Costs of Issuance Deposit into the Costs of Issuance Fund.

Disbursements from the Costs of Issuance Fund. The Trustee will disburse moneys on deposit in the Costs of Issuance Fund to pay Costs of Issuance. Moneys on deposit in the Costs

of Issuance Deposit Account will not be part of the Trust Estate and will be used solely to pay Costs of Issuance.

Disposition of Remaining Amounts. Any moneys remaining in 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. Upon final disbursement and/or transfer, the Trustee will close the Costs of Issuance Fund.

### **Rebate Fund**

The Trustee will 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 will 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 will 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 will 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 will 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 described under the heading "Nonpresentment of Bonds" below 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 described herein under the headings "Purchase and Remarketing of Bonds-Optional Tender" and "-Mandatory Tender and Purchase."

### **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.

Disbursements from the Principal Reserve Fund. The Trustee will 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 the 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 in writing, for any use 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, (i) during any period Series A-T Bonds remain Outstanding, if the aggregate amount on deposit in the Principal Reserve Fund (excluding all Investment Income) on the tenth day of any month equals or exceeds \$100,000, an amount equal to the amount on deposit in the Principal Reserve Fund (rounded downward to the nearest integral multiple of \$100,000), to the Redemption Account, and (ii) subsequent to the date no Series A-T Bonds remain Outstanding, all amounts on deposit in the Principal Reserve Fund in excess of the Principal Reserve Amount (rounded downward to the nearest integral multiple of \$100,000), to the Redemption Account;

(g) pay to the Borrower, on the Interest Payment Date following receipt by the Trustee of 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. 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 amounts held by the Trustee. The obligation of the Trustee described under this heading to pay any such amount 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.

## **Disposition of Remaining Moneys**

Provided that the rebate requirements referenced in the Tax Certificate are first satisfied, any amounts remaining in the Revenue Fund or the Principal Reserve Fund after payment in full of the principal of and interest and any premium on the Bonds will be applied to pay (i) first, to the Credit Provider any unpaid amounts certified by the Credit Provider to be due and owing to the Credit Provider, (ii) second, to the person or persons entitled to be paid, all other unpaid amounts required to be paid under the Indenture or the Financing Agreement and (iii) third, to the Borrower the balance upon the expiration or sooner cancellation or termination of the term of the Financing Agreement as provided in the Financing Agreement.

## **Investments**

Investment Limitations. 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 (i) Interest Account will be invested only in investments described in paragraphs (a), (b), (c), and (h) of the definition of Permitted Investments, (ii) Redemption Account will 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, (iii) Credit Facility Account and Bond Purchase Fund will be held uninvested and (iv) Costs of Issuance Fund, until transferred, disbursed or returned to the Borrower pursuant to the Indenture, 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 provided below) and the Principal Reserve Fund, upon receipt, will be deposited into the Interest Account. Investment Income from moneys held in the Loan Fund, the Rebate Fund, the Costs of Issuance Fund and the Principal Reserve Fund will remain in the respective Fund where earned.

Trustee's Authority and Responsibilities. The Trustee is authorized to sell and reduce to cash a sufficient amount of Permitted Investments whenever the cash balance is or will be insufficient to make a requested or required disbursement. The Trustee will not be accountable for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale. The Trustee may trade with itself and its Affiliates in the purchase and sale of securities for investments, and may transact purchases and sales through its investment department or through its Affiliates. The Trustee and its Affiliates may act as principal, agent, sponsor, advisor or depository with respect to any investments. All Permitted Investments will be made by the Trustee in its name, as Trustee, at the written direction of the Borrower, subject to the limitations contained in the Indenture. If no direction is provided to the Trustee, the Trustee will invest such moneys in investments described in paragraph (h) of the definition of Permitted Investments. All investments of amounts deposited in any fund or account created by or pursuant to the Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of the Code) shall be acquired, disposed of, and valued (as of the date valuation is required by the Indenture of the Core) at Fair Market Value and investment of amounts deposited in any fund or account established hereunder that are subject to yield restriction under applicable provisions of the Code shall be valued at their present value within the meaning of the Code. The Trustee will take such actions as will be necessary to assure that Permitted Investments purchased by it under the Indenture are held pursuant to the terms of the Indenture and are subject to the trusts and security interests created in the Indenture. The Issuer (and the Borrower by its execution of the Financing Agreement) has acknowledged that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Borrower have specifically waived receipt of such confirmations to the extent permitted by law.

### **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 will 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 or of any other political subdivision of the State, and neither the State, the Issuer nor 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 charges except to the extent that the same can be paid or recovered from the Trust Estate.

(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.

### **Discharge of Lien and Security Interest**

Discharge. Upon satisfaction of the conditions set out under the heading “Conditions to Discharge” below, the Trustee will (i) cancel and discharge the Indenture and the pledge and assignment of the Security, (ii) execute and deliver to the Issuer such instruments in writing prepared by the Issuer or its counsel and provided to the Trustee and the Credit Provider as may be required to cancel and discharge the Indenture and the pledge and assignment of the Trust Estate, (iii) reconvey, assign and deliver to the Issuer so much of the Trust Estate as may be in its possession or subject to its control (except for (A) moneys and Government Obligations held for the purpose of paying Bonds and (B) moneys and Investments held in the Rebate Fund for payment to the United States Government) who will, in turn, convey, assign and deliver the remaining Trust Estate to the Borrower and (iv) return the Credit Facility to the Credit Provider.

Conditions to Discharge. The conditions precedent to the cancellation and discharge of the Indenture and the other actions described under the heading “Discharge” above are (i) payment in full of the Bonds, (ii) payment of the Trustee’s Annual Fee and the Trustee’s ordinary costs and expenses under the Indenture, (iii) receipt by the Trustee of a written statement from the Credit Provider stating that all obligations owed to the Credit Provider under the Credit Facility Documents have been fully paid, (iv) payment of all Extraordinary Items, (v) receipt by the Trustee of a written statement from the Issuer stating that all amounts owed to the Issuer in respect of Reserved Rights have been fully paid, (vi) return of the Credit Facility to the Credit Provider, and (vii) receipt by the Trustee of an Opinion of Counsel, at the expense of the Borrower, stating that all conditions precedent to the satisfaction and discharge of the Indenture have been satisfied.

Payment of Outstanding Amounts. If the Bonds are paid in full, but any one or more of the other conditions precedent set out under the heading “Conditions to Discharge” above are not satisfied because an amount has not been paid, the Trustee, prior to cancellation and discharge of the Indenture, will pay to the persons listed below, in the strict order set out below, the amounts required to satisfy those conditions precedent:

(a) Trustee’s Annual Fee and Ordinary Costs and Expenses. If any portion of the Trustee’s Annual Fee or ordinary costs and expenses of the Trustee remain unpaid, the Trustee will pay to itself so much of the Trust Estate as will fully pay such unpaid amounts. No Extraordinary Items may be included under this subparagraph.

(b) Credit Provider. If the Trustee receives a written statement from the Credit Provider stating that moneys are owed to the Credit Provider under the Credit Facility Documents or the Loan Documents, including obligations in respect of reimbursement of funds advanced by the Credit Provider to the Trustee for application to the payment of Remarketing Expenses, the Trustee will pay to the Credit Provider so much of the remaining Trust Estate as will fully pay all amounts due and owing to the Credit Provider, as determined by the Credit Provider. The reimbursement from the Trust Estate of amounts advanced by the Credit Provider for application to the payment of Remarketing Expenses will be made with interest at a rate equal to the Prime Rate (as that term is defined in the Reimbursement Agreement) plus two percentage points, from the date or dates of such advances through the date of such

reimbursement. The Trustee is authorized to rely on the written statement of the Credit Provider as to the amount of such advances and interest accrued on such advances.

(c) Trustee. If any Extraordinary Items have not been paid to the Trustee, the Trustee will pay to itself so much of the remaining Trust Estate as will fully pay all amounts owing to the Trustee for Extraordinary Items.

(d) Issuer. If the Trustee receives a written statement from the Issuer stating that moneys are owed to the Issuer in respect of the Reserved Rights, the Trustee will pay to the Issuer so much of the remaining Trust Estate as will fully pay all amounts owing to the Issuer in respect of the Reserved Rights.

## **Defeasance**

The Bonds may not be defeased within the meaning of the provisions of the Indenture relating to Defeasance if the Bonds are in the Weekly Variable Rate Mode.

## **Default Provisions and Remedies**

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

(a) default in the payment when due and payable of any interest due on any Bond (other than a Pledged Bond);

(b) 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) at maturity or upon any redemption, or (ii) the purchase price of any Tendered Bond (other than a Pledged Bond);

(c) 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 set forth in subsection (a) or (b) above) and the continuance of such default for a period of 30 days after the Trustee receives such notice;

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

(e) an Act of Bankruptcy; or

(f) a Wrongful Dishonor.

Preliminary Notice. The Trustee will immediately notify the Issuer, the Loan Servicer, the Borrower and the Credit Provider after the Trustee obtains knowledge or receives notice of the occurrence of an Event of Default under the Indenture or an event which would become an Event of Default with the passage of time, the giving of notice or both, identifying the paragraph under which the Event of Default has occurred or may occur.

Nondefault and Prohibition of Mandatory Redemption Upon Tax Event. The occurrence of any event (a "Tax Event") which results in the interest payable on the Series A 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, will not (a) 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 (b) give rise to a mandatory redemption of the Series A Bonds, or (c) give rise to the payment to the Series A 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 Series A Bonds prior to the occurrence of the Tax Event. Nothing described in this subsection 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 Credit Provider, the Loan Servicer, the Registered Owners of the Bonds and the Remarketing Agent, will 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 will 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 Loan.

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 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, and will, upon the written direction of the Credit Provider requiring that the Bonds be accelerated pursuant to this subsection, 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.

Notice. Upon any decision to accelerate payment of the Bonds, the Trustee will notify the Bondholders of the declaration of acceleration, that, in the event of acceleration, 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 will be sent by registered mail or overnight delivery service, postage or charges 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.

Draw on Credit Facility. Immediately upon acceleration of the Bonds, the Trustee will request an Advance under the Credit Facility in accordance with its terms.

Other Remedies. Upon the occurrence and continuance of an Event of Default under the Indenture, the Trustee may, with or without taking action described under “Acceleration” above, but only with the prior written consent of the Credit Provider, and will, at the direction of the Credit Provider if the Event of Default occurs under paragraph (c), (d) or (e) under the heading “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.

Subject to the provisions of the Indenture described under the headings “Rights of the Credit Provider and the Bondholders to Direct Proceedings” and “Limitations on Bondholders’ Rights” below and the requirement, if any, that the Credit Provider consent in writing to the exercise by the Trustee of any remedy, upon the occurrence and continuance of an Event of Default under the Indenture, the Trustee will exercise such of the rights and powers described under this heading 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.

Preservation of Security and Remedies if Payment Under Credit Facility is Not Made or is Insufficient; Rights of Bondholders. Upon the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may proceed, and upon the written request of the holders of not less than 25% of the aggregate principal amount of the Bonds Outstanding and the receipt of indemnity reasonably satisfactory to the Trustee will proceed, to protect and enforce its rights and the rights of the Bondholders under the Indenture by such suits, actions or special proceedings in equity or at law, whether for the specific performance of any covenant or agreement, or in aid of the execution of any power granted in the Indenture or by the Act, or for the enforcement of any legal or equitable right or remedy, as the Trustee, being advised by counsel, will deem most effective to protect and enforce such rights or to perform any of its duties under the Indenture.

Remedies Not Exclusive; Delay or Omission. No right or remedy conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy will be cumulative and 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 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 the waiver is directed by the Credit Provider, the Credit Provider must 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 must remain in effect in an amount equal to the aggregate principal amount of the Bonds Outstanding (other than Pledged Bonds) plus the Interest Requirement; provided, 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 will be deemed cured and will 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 will extend to or affect any subsequent default or Event of Default or will 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, will 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, that such direction shall 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 for actions required under the provisions of the Indenture described under the heading "Acceleration" above).

Limitations on Bondholders' Rights. No Bondholder has or will 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 (i) such Event of Default is a Wrongful Dishonor, (ii) such Bondholder has given the Trustee, the Issuer, the Credit Provider, the Loan Servicer and the Borrower written notice of the Event of Default, (iii) 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, (iv) the Trustee has been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, (v) the Trustee has been offered reasonable indemnity, where required, and (vi) 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 will 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 subsection, no Bondholder has or will 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.

Discontinuance of Proceedings. If the Trustee or any Bondholder has instituted any proceeding or remedy under the Indenture, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the Issuer, the Credit Provider and the Trustee will be restored to their former positions and rights under the Indenture, and all rights, remedies, powers, duties and obligations of the Issuer, the Trustee and the Credit Provider will continue as if no such proceedings had been taken, subject to the limits of any adverse determination.

Application of Moneys. Amounts derived from payments under the Credit Facility (other than amounts derived from an Advance to pay the Issuer's Annual Fee) will 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 will 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 article of the Indenture described under the heading "Default Provisions and Remedies" 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), will be applied as set out below.

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 will 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 will 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; and

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 of 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 as specified in writing to the Trustee by the Credit Provider; and third, to any other amounts due and payable under the Indenture.

General. Whenever moneys are to be applied as described under this heading “Application of Moneys,” such moneys will be applied at such times, and from time to time, as the Trustee determines, having due regard for the amount of such moneys available for application, the likelihood of additional moneys becoming available for such application in the future, and potential expenses relating to the exercise of any remedy or right conferred on the Trustee by the Indenture. Whenever the Trustee applies such moneys, it will fix the date (which will be an Interest Payment Date unless it deems an earlier date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date will cease to accrue, unless interest has already ceased to accrue in accordance with the provisions of the Indenture described under the heading “Acceleration-Notice” above. The Trustee will give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and will not be required to make payment to the owner of any Bond until such Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

## **The Trustee**

Limitation of Responsibility. The Trustee will not be responsible for any recital in the Indenture or in the Bonds (other than in the certificates of authentication on the Bonds), or for insuring the Mortgaged Property, or for the sufficiency of any insurance, or for collecting any insurance moneys, or for the validity of the Indenture or of any supplements to the Indenture or instruments of further assurance, or for the sufficiency of the security for the Bonds issued under the Indenture or intended to be secured by the Indenture, or for the value or condition of or title to the Mortgaged Property or the Security. The Trustee may require (but will be under no duty to require) of the Borrower full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the Mortgaged Property. The Trustee will not be liable for any loss suffered in connection with any investment of amounts made by it in accordance with the Indenture. The Trustee is not accountable for the use (i) of any Bonds delivered in accordance with instructions of the Issuer, (ii) by the Borrower of the proceeds of the Loan, or (iii) for the use or application of any moneys paid out by the Trustee in accordance with the Indenture.

Not Bound to Inquire. The Trustee is not required to take notice or deemed to have notice of any default or Event of Default under the Indenture, except Events of Default described under paragraphs (a), (b) or (f) under the heading “Default Provisions and Remedies-Events of Default” above, unless the Trustee has actual knowledge of the default or the Event of Default or has received notice in writing of such default or Event of Default from the Issuer, the Borrower, the Credit Provider, the Loan Servicer, or the holders of at least 25% in aggregate principal amount of the Outstanding Bonds, and in the absence of any such notice, the Trustee may conclusively assume that no such default or Event of Default exists. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their respective obligations under the Financing Agreement, the Regulatory Agreement and the Indenture, but is not obligated to do so.

Standard of Care. The Trustee, during the existence and continuation of any Event of Default under the Indenture, will exercise such of the rights vested in it by the Indenture, the Financing Agreement and the Regulatory Agreement, and use the same degree of care and skill in their exercise, as a reasonable person would exercise or use under the circumstances in the

conduct of such person's own affairs. The foregoing will not limit the Trustee's obligations described under the headings "Discharge of Lien and Security Interest" and "Default Provisions and Remedies-Acceleration" above.

Qualification. 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.

Resignation or Removal of Trustee. The Trustee may resign only upon giving 60 days prior written notice to the Issuer, the Credit Provider, the Loan Servicer, the Borrower and to each Registered Owner of Bonds then Outstanding as shown on the Bond Register. The Trustee may be removed at any time, upon 30 days' prior written notice to the Trustee, (a) by the Issuer, with the prior 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 or (c) by the Credit Provider. Any such resignation or removal shall not be effective until a successor Trustee satisfying the requirements described under the heading "Qualification" above 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 Borrower with the prior written consent of the Issuer and the Credit Provider (unless appointed by the Bondholders as provided in the Indenture), provided, however, that if the Borrower is then in default under any Bond Document or any Loan Document or if an event has occurred and is continuing which, with notice or the passage of time or both, would constitute such a default, such appointment will be made by the Issuer with the prior written consent of the Credit Provider. 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 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 this 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 Credit Provider, the Loan Servicer and the Borrower.

## **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 following purposes:

(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, in the judgment of the Trustee, 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, in the judgment of the Trustee, 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 rating of "AAA" or equivalent 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 under the heading "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 as described under the heading "THE BONDS-Purchase and Remarketing of Bonds-Optional Tender" herein; 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.

If the Trustee has received written confirmation from the Rating Agency to the effect that such supplemental indenture will not result in the suspension, withdrawal or reduction of the then current rating on the Bonds and all conditions precedent described under this heading and under the headings "Notice to and Consent of Bondholders" and "Required Approvals" below have been satisfied, the Trustee will join the Issuer in the execution of any such supplemental indenture.

Supplemental Indentures Requiring Bondholder Consent. The Issuer and the Trustee may, with the consent of Bondholders owning not less than 51 percent 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 of the Indenture

provided, however, that nothing described under this heading will permit, 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 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 holders 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 holders of all of the Bonds then Outstanding; or

(i) the amendment of the provisions of the Indenture described under this heading, without the consent of the holders of all of the Bonds then Outstanding.

The Trustee will promptly furnish a copy of any such supplemental indenture to the Credit Provider, the Remarketing Agent, the Tender Agent, the Loan Servicer and the Borrower. Notice of any amendment pursuant to this Section will be given to the Bondholders promptly following the execution of such amendment.

No Bondholder Consent Required for Amendment to Loan Documents. Unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider alone 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 will 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.

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

(a) 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) 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) Except as provided in subsections (a) and (b) above, 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 will 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 will briefly set forth the nature of the proposed supplement, amendment or modification, and will 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 to any Transaction Document without the prior written consent of the Credit Provider. Anything in the Indenture to the contrary notwithstanding, a supplement or amendment or other document described under the heading "Supplemental Indenture; Amendments" which materially and adversely affects any rights or obligations of the Borrower shall 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 will not be required to enter into any supplement or amendment which adversely affects the Trustee's rights and duties under the Indenture.

Opinions of Counsel. Subject to the provisions of the Indenture, 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 will be effective until the Issuer and the Trustee will 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 Series A 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.

#### **The Loan**

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 amount equal to the Principal Amount of the Bonds to the Borrower with the Net Bond Proceeds. Upon the issuance and delivery of the Bonds, the Issuer delivered the Net Bond Proceeds to the Trustee. The Loan was deemed made in full upon deposit of the Net Bond Proceeds into the Loan Fund. The Borrower accepts 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 agrees to have the proceeds of the Loan applied and disbursed directly or indirectly to the current refunding of the Prior Bonds.

Note and Security Instrument. The Loan is evidenced by, payable in accordance with, and bears interest at the rates and on the terms provided in, the Note and secured by the Security Instrument.

#### **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 has agreed to pay when due, without duplication, the fees, expenses and other sums described under this heading.

(a) Issuer. The Issuer's Fee and all costs and expenses incurred by the Issuer at any time in connection with the Bonds.

(b) Trustee. The Trustee's acceptance fee, if any, which shall be paid on the Closing Date, the Trustee's Annual Fee, and all advances, out-of-pocket expenses, fees, costs and other charges reasonably and necessarily incurred by the Trustee under the Indenture and Extraordinary Items.

(c) Tender Agent. The fees, costs and expenses of the Tender Agent, all advances, out-of-pocket expenses, fees, costs and other charges reasonably and necessarily incurred by the Tender Agent in performing its duties as Tender Agent under the Indenture and the Pledge Agreement.

(d) Remarketing Agent. The fees, costs and expenses of the Remarketing Agent and the costs and expenses of the Remarketing Agent which the Borrower is obligated to pay under the Remarketing Agreement.

(e) Rebate Analyst. The annual or other periodic fees of the Rebate Analyst.

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

(g) Costs of Issuance. All Costs of Issuance.

(h) Bond Costs. 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.

(i) Adjustment or Conversion of Interest Rate; Tender, Purchase, Remarketing or Reoffering of Bonds. 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.

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.

#### **Liability for Fees, Costs and Expenses**

Neither the Issuer nor the Trustee will have any obligation to pay any of the fees, costs or expenses described under the heading "Payment of Fees, Costs and Expenses" above (provided that the Issuer's Annual Fee includes the Trustee's Annual Fee).

#### **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 has agreed to 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.

#### **Nature of Borrower's Obligations; Security for Obligations**

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 will be absolute, unconditional and irrevocable, will 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, setoff, 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 described 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, will 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 will 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, will not be secured by the Security Instrument and will 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) will 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 will 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 will have recourse against or the right to levy against or otherwise collect on any judgment from the Mortgaged Property.

#### **Tax Covenants.**

The Borrower covenants that:

- (i) it will at all times comply with the terms of the Tax Certificate and the Regulatory Agreement;
- (ii) it will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Series A Bonds to be included in gross income, for federal income tax purposes, and will take such action as may be necessary in the Opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation the following:

(A) the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

(B) the timely payment to the United States of America of any rebate amount required to be paid by the Issuer or the Borrower pursuant to Section 148(f) of the Code and the Treasury Regulations under Section 148; and

(C) the use of not less than 95% of the net proceeds of the original tax-exempt bonds issued and delivered to acquire and construct the Mortgaged Property (the "Original Bonds") (within the meaning of Section 142(a) of the Code) for Qualified Project Costs;

(iii) in order to satisfy the requirements set forth in subpart (4) of the definition of "program investment" that appears in Section 1.148-1(b) of the Treasury Regulations (which requirements must be met in order for the Mortgage Loan to qualify as a program investment within the meaning of that section), neither the Borrower nor any related person (within the meaning of "program investment") will purchase Series A Bonds in an amount related to the amount of the Mortgage Loan;

(iv) no changes will be made to the Mortgaged Property, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Series A Bonds;

(v) it will comply with the requirements of Section 148 and the Treasury Regulations issued under Section 148 throughout the term of the Bonds and will not make any use of the proceeds of the Series A Bonds, or of any other funds which may be deemed to be proceeds of the Series A Bonds under the Treasury Regulations, which would cause the Series A Bonds to be "arbitrage bonds" within the meaning of Section 148 and the Treasury Regulations;

(vi) if the Borrower becomes aware of any circumstance, event or condition which would result in the interest payable on the Series A Bonds becoming includable in gross income, for federal income tax purposes, the Borrower will promptly give written notice of such circumstance, event or condition to the Issuer, the Trustee, the Loan Servicer and the Credit Provider;

(vii) the full amount of each disbursement from the Mortgage Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Mortgaged Property and, after taking into account any proposed disbursement, (a) at least 95% of the net proceeds of the Original Bonds (as defined in Section 150 of the Code) were used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (b) less than 25% of the net proceeds of the Original Bonds were disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Series A Bonds (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(viii) the Borrower will cause the required number of the residential units in the Mortgaged Property to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Regulatory Agreement;

(ix) all leases will comply with all applicable laws and the Regulatory Agreement;

(x) in connection with any lease or grant by the Borrower of the use of the Mortgaged Property, the Borrower will require that the lessee or user of any portion of the

Mortgaged Property not use that portion of the Mortgaged Property in any manner which would violate the covenants set forth in this Financing Agreement or the Regulatory Agreement; and

(xi) that no proceeds of the Series A Bonds will be used, for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property was pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in the Code) with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Series A Bonds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Series A Bonds. The Borrower irrevocably authorizes and directs the Issuer, the Trustee and any other agent designated by the Issuer to make payment of such amounts from funds of the Borrower, if any, held by the Issuer, the Trustee, or any agent of the Issuer or the Trustee. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase Series A Bonds in an amount related to the amount of the Loan, other than Pledged Bonds.

(xii) it shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(xiii) from the proceeds of the Series A Bonds (within the meaning of the Code) and investment earnings thereon, it will not use an amount in excess of two percent (2%) of the proceeds of the Series A Bonds, for costs of issuance of the Bonds, all within the meaning of Section 147(g)(1) of the Code. For this purpose, if the fees of the original purchaser of the Series A Bonds are retained as a discount on the purchase of the Series A Bonds, such retention shall be deemed to be an expenditure of proceeds of the Series A Bonds (within the meaning of the Code) for said fees.

(xiv) no proceeds of the Series A Bonds (within the meaning of the Code) shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

## **Indemnification**

The Borrower has released the Issuer, the Association of Bay Area Governments ("ABAG"), 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, ABAG, the Trustee or the Tender Agent within the meaning of the Securities Act of 1933, from, and has covenanted and agreed to indemnify, hold harmless and defend the Issuer, ABAG, 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 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 relating to the Borrower or the Mortgaged Property 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 relating to the Borrower or the Mortgaged Property 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 the Financing 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 this 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.

The indemnification extends to and includes, 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, the Tender Agent or any of their related 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.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought as described under this heading, the Borrower, upon written notice from the Indemnified Party, will assume the investigation and defense of the action or proceeding, including the engagement of counsel selected by the Borrower, subject to the approval of the Indemnified Party in such party's sole discretion, and will assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion; provided, however, that the Indemnified Party will have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party will have the right to engage separate counsel in any action or proceeding and participate in the investigation and defense of such action or proceeding, and the Borrower will pay the reasonable fees and expenses of such separate counsel if (i) the Indemnified Party determines that a conflict exists between the interests of the Indemnified Party, the interest of any other Indemnified Party and the interests of the Borrower or (ii) such separate counsel is engaged with the approval of the Borrower, which approval will not be unreasonably withheld, conditioned or delayed.

### **Events of Default and Remedies**

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

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

2. 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 Trustee specifying such failure and requesting that it be remedied, provided, however, that if the failure cannot be corrected within such period, it will 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 Series A 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.

3. 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 will constitute a default under the Financing Agreement unless specifically declared to be so by the Credit Provider. The Credit Provider will 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:

1. by written notice to the Borrower, declare all amounts then due and payable on the Note to be immediately due and payable;

2. exercise any of the rights and remedies provided in the Loan Documents; and

3. 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 Mortgaged Property. Neither the Issuer nor the Trustee will 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 Mortgaged Property 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.

Waiver and Annulment. Unless the Credit Provider otherwise consents in writing, neither the Issuer nor the Trustee may waive or annul any Event of Default under the Financing Agreement unless (i) all amounts which would then be payable under the Financing Agreement by the Borrower if such Event of Default had not occurred and was not continuing are paid by or on behalf of the Borrower, and (ii) the Borrower also performs all other obligations in respect of which it is then in default under the Financing Agreement and pays the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorneys' fees and expenses paid or incurred in connection with such default. No waiver or annulment will extend to or affect any subsequent Event of Default or impair any right or remedy consequent on such Event of Default.

No Remedy Exclusive. All rights and remedies provided in the Financing Agreement are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise.

No Waiver. No delay or omission to exercise any right or power accruing upon any Event of Default under the Financing Agreement will impair any such right or power or will be construed to be a waiver of such Event of Default, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

No Notices. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it will not be necessary to give any notice, other than such notice as may be expressly required in this Article or by any Bond Document.

Expenses. In the event the Borrower should default under the Financing Agreement and the Issuer employs attorneys or incurs other expenses for the collection of payments under, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in, the Financing Agreement, the Borrower has agreed that it will pay, on demand, to the Issuer the reasonable fees of such attorneys and such other expenses so incurred by the Issuer.

## **Amendment**

No amendment to the Financing Agreement will 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 will be effective without the prior written consent of the Credit Provider, subject to the provisions of the Financing Agreement.

## APPENDIX D

### SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT

The following is a brief summary of certain provisions 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

“Adjusted Income” means the adjusted income of a person together with the adjusted income of all persons (except children under the age of 18 years) who intend to reside with such person in one residential unit; as calculated in the manner prescribed in the Code.

“Area” means the Oakland, California Primary Metropolitan Statistical Area in which the Project is located, as promulgated by HUD.

“Annual Certificate of Continuing Program Compliance” means the Certificate to be filed annually by the Borrower with the Issuer and the Trustee substantially in the form attached to the Regulatory Agreement.

“Code” means the Internal Revenue Code of 1954, as amended (herein the “1954 Code”) and the Internal Revenue Code of 1986, as amended (herein the “1986 Code”), in each case to the extent made applicable to matters relating to the Bonds and the Project by Section 1313(a) of the Tax Reform Act of 1986, and with respect to a specific section thereof such reference shall be deemed to include (a) the applicable regulations promulgated or proposed under such section or any previous corresponding section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the applicable regulations promulgated or proposed under the provisions described in (b) and (c).

“Housing Act” means the United States Housing Act of 1937, as amended, and any regulations pertaining thereto.

“Low Income Tenants” means individuals or families, on the basis of the “Income Computation and Certification” attached to the Regulatory Agreement as certified by such individual or family, who have an Adjusted Income which does not exceed eighty percent (80%) of the Median Income for the Area.

“Low Income Units” means the dwelling units in the Project designated for occupancy by Low Income Tenants pursuant to the Regulatory Agreement.

“Median Income for the Area” means the median income for the Area as most recently determined by the Secretary of the Treasury (which determination is required by Code Section 142(d)(2)(B) to be consistent with determinations of area median gross income under Section 8 of the United States Housing Act of 1937, or, if such program is terminated, under such program as in affect immediately before such termination).

“Project Facilities” means the multifamily rental housing development consisting of 168 units, including structures, buildings, fixtures or equipment, as it may at any time exist, the acquisition, rehabilitation and development of which facilities are to be financed or refinanced from the proceeds of the sale of the Bonds and any structures, buildings, fixtures or equipment

acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities.

“Project Site” means the parcel of real property described in the Regulatory Agreement, and all rights and appurtenances thereunto appertaining.

“Qualified Project Period” means the period beginning on the later of (i) the first day on which ten percent of the dwelling units in the Project were first occupied, and (ii) the date of the issuance of the Original Bonds and ending on the later of: (a) December 1, 2020; (b) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates; or (c) the first day on which no private activity tax-exempt bond issued with respect to the Project is outstanding.

“Regulations” means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.

“Restricted Tenants” means Low Income Tenants or Very Low Income Tenants, as applicable.

“Restricted Units” means Low Income Units and Very Low Income Units, as applicable.

“Section 8 Tenants” means persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor.

“Very Low Income Tenants” means individuals or families, on the basis of the “Income Computation and Certification” attached to the Regulatory Agreement as certified by such individual or family, who have an Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area.

“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 has acknowledged and agreed that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of the Code) for a term equal to the Qualified Project Period. To that end, and for the term of the Regulatory Agreement, the Borrower has represented, warranted and covenanted in the Regulatory Agreement as follows:

(a) The Project has been and will be owned by the Borrower 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 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 are similarly constructed units, and, to the extent required by the Code and the Regulations, each dwelling unit in the Project contains 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 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 the interest on the Bonds will not become includable in gross income for federal income tax purposes thereby under Section 103 of the Code.

(e) All of the dwelling units in the Project 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 Low Income Tenants, Very Low Income Tenants or Section 8 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 Project Facilities 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. Notwithstanding the foregoing, this subsection shall not be construed to prohibit occupancy of dwelling units by one or more resident managers or maintenance personnel any of whom may be the Borrower or other administrative personnel; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of dwelling units in the Project.

(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 Issue 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 Loan or apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of the Code and the Regulations.

(i) The Borrower shall not discriminate on the basis of race, 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 rehabilitation, operation and management of the Project.

(j) The Borrower shall provide competent and responsible management for the Project by employees of Borrower or an affiliate of Borrower, or a management company and pursuant to a written management agreement, satisfactory to the Issuer. 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.

## Low Income Tenants

The Borrower has represented, warranted and covenanted in the Regulatory Agreement as follows:

### A. Restricted Units.

(i) Throughout the term of the Qualified Project Period, (i) not less than ten percent (10%) of the completed units in the Project shall be occupied (or held vacant and available for immediate occupancy) at all times by Low Income Tenants and (ii) not less than ten percent (10%) of the completed units in the Project shall be occupied (or held vacant and available for immediate occupancy) at all times by Very Low Income Tenants and the rent charged for any such unit shall be no more than the Affordable Rent; provided, however, the provisions of this paragraph shall be deemed complied with to the extent that units in the Project are rented to Section 8 Tenants, which Section 8 Tenants shall be applied as described in the Regulatory Agreement.

The Project shall be deemed in compliance with the requirements of this paragraph on the Issue Date to the extent the Project is in compliance with the provisions of the Prior Regulatory Agreement. The Borrower shall have one hundred and twenty (120) days from the Issue Date to bring the Project into compliance with the provisions of the Regulatory Agreement. In the event that the Project is not in compliance with the provisions of the Regulatory Agreement on the date one hundred and twenty (120) days from the Issue Date, the Borrower shall hold the next available units vacant for occupancy by Low Income Tenants or Very Low Income Tenants, as necessary, until such time as the Project meets the requirements of the Regulatory Agreement. In meeting the requirements of the Regulatory Agreement, the Low Income Tenants occupying the Project for the purposes of meeting the requirements of the Prior Regulatory Agreement shall not be displaced.

(ii) The Borrower will designate such units and will make any revisions to such designations (which revisions the Borrower may make from time to time at its sole option, provided that the requirements hereof are met on a continuous basis) by delivery of an appropriate certificate to the Issuer.

(iii) The Borrower shall advise the Administrator and the City of the status of the occupancy of the Project on an annual basis for the term of the Regulatory Agreement by delivering an Annual Certificate of Continuing Program Compliance (in the form attached to the Regulatory Agreement or in such other form as the Borrower and the Issuer may agree to in writing) each July 15.

(iv) The Restricted Units will be intermingled with all other dwelling units in the Project and shall be of a quality, and offer a range of sizes and number of bedrooms,

comparable to those units which are available to other tenants. Tenants in the Restricted Units shall have equal access and enjoyment to all common facilities of the Project.

A unit occupied by a Restricted Tenant who at the commencement of the occupancy is a Restricted Tenant shall be treated as occupied by a Restricted Tenant until a recertification of such tenant's income in accordance with the following paragraph demonstrates that such tenant no longer qualifies as a Restricted Tenant, as applicable, and thereafter any residential unit of comparable or smaller size in the Project is occupied by a new resident other than a Restricted Tenant, as applicable. Moreover, a unit previously occupied by a Restricted Tenant and then vacated shall be considered occupied by a Restricted 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.

B. Immediately prior to the anniversary date of the occupancy of a Restricted Unit by one or more Restricted Tenants, and on each anniversary date thereafter, the Borrower shall recertify the income of the occupants of such Restricted Unit by obtaining a completed Income Computation and Certification in the form attached to the Regulatory Agreement (or in such other form as the Borrower and the Issuer may agree to in writing) based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 100% if a Low Income Tenant or 80% if a Very Low Income Tenant of the Median Income for the Area, as applicable, as adjusted by the assigned household size set forth in the Regulatory Agreement, the Borrower covenants in the Regulatory Agreement to rent the next available unit of comparable or smaller size to tenants who are Low Income Tenants or Very Low Income Tenants, as applicable, so that at least ten percent (10%) of the units in the Project remain occupied by Low Income Tenants and ten percent (10%) of the units in the Project remain 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 Low Income Tenants or Very Low Income Tenants, as applicable. An "available" unit is one that is unoccupied by a tenant.

C. The Borrower will maintain a list of persons who have submitted an application to the Borrower of their desire to rent a unit in the Project and paid the application fee, and who have Adjusted Incomes which would qualify them as Restricted Tenants.

D. The Borrower will maintain complete and accurate records pertaining to the Restricted Units, and will permit any duly authorized representative of the Issuer, the Administrator, the Department of the Treasury 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 Restricted Units, upon not less than forty-eight (48) hours advance written notice.

E. The Borrower shall accept as tenants on the same basis as all other prospective tenants, Section 8 Tenants. The Borrower shall not apply selection criteria to Section 8 Tenants that are more burdensome than criteria applied to all other prospective tenants.

F. Each lease pertaining to a Restricted Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Restricted Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

## Sale or Transfer of the Project

The Borrower has covenanted and agreed in the Regulatory Agreement not to voluntarily sell, transfer or otherwise dispose of the Project or any portion thereof (other than for individual tenant use as contemplated hereunder), without obtaining the prior written consent of the Issuer and the City, which consents shall not be unreasonably withheld. Such consent shall be given by the Issuer upon compliance by the Borrower with the following (i) delivery by the Borrower or transferee to the Issuer and the Trustee of reasonable evidence satisfactory in the form of all instruments of assumption to the Issuer that the Borrower's purchaser or transferee has assumed in writing and in full, and is reasonably capable of performing and complying with, the Borrower's duties and obligations under the Regulatory Agreement and the Financing Agreement, (ii) delivery by the Borrower or transferee to the Issuer and the Trustee of an opinion of counsel from the date of such assumption of the transferee, addressed to the Issuer, the Trustee, that the transferee has duly assumed the obligations of the Borrower under the Regulatory Agreement and the Financing Agreement, and that such obligations and the Regulatory Agreement, the Financing Agreement are legal, valid and binding obligations of the transferee, (iii) delivery by the Borrower to the Issuer, with a copy to the Trustee, of a certificate of a Borrower Representative to the effect that no default has occurred and is continuing under the Regulatory Agreement or the Financing Agreement, and (iv) delivery by the Borrower or transferee to the Issuer of evidence that all fees due the Issuer, the Administrator and the Trustee under the Financing Agreement and the Indenture are current. The Regulatory Agreement expressly provides that any sale, transfer or other disposition of the Project in violation of this paragraph 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 contained in the Regulatory Agreement shall affect any provision of any other document or instrument between the Borrower and the Issuer or the Trustee, which requires the Borrower to obtain the consent of the Issuer, the Bondowners or the Trustee as a precondition to sale, transfer or other disposition of the Project or which gives the Issuer or the Trustee the right to accelerate the maturity of the Loan, or to take some other similar action with respect to the Loan upon the sale, transfer or other disposition of the Project. Upon any such permitted sale or transfer of the Project under this paragraph, the selling or transferring entity shall be deemed released from its future obligations under the Regulatory Agreement but not from liability for past actions or inactions with respect to its obligations under the Regulatory Agreement.

Before the Borrower or, if the Project is then owned by a Permitted Transferee (as defined below), the Permitted Transferee may voluntarily sell the Project, the City (or its assignee) shall have a one-time right of first refusal to purchase the Project at Fair Market Value (as defined below). For the purposes of this and the immediately preceding paragraphs, "Fair Market Value" shall, at the option of the Borrower or the Permitted Transferee, as applicable, be (i) the bonafide cash price or other consideration for which the Borrower or the Permitted Transferee has agreed to sell the Project pursuant to a bonafide offer acceptable to the Borrower or the Permitted Transferee from a third party, or (ii) the appraised value acceptable to the Borrower or the Permitted Transferee determined by an MAI appraisal prepared by an independent MAI appraiser jointly chosen by the Borrower or the Permitted Transferee and the City. At any time within 60 days after receipt of notice of the Borrower's or the Permitted Transferee's intention to sell the Project (the "Notice"), the City and/or its assignee may, by giving written notice to the Borrower or the Permitted Transferee, elect to purchase the Project at Fair Market Value, unless the Notice states that the Borrower or the Permitted Transferee will pay to the City the sum of \$100,000 upon the closing of the sale of the Project to the person who made the bonafide offer (the "Permitted Purchaser"). If the Borrower or the Permitted Transferee elects to pay the foregoing amount to the City at closing, then the Borrower or the Permitted Transferee, as applicable, shall be released from the right of first refusal obligation

granted to City in the Regulatory Agreement upon payment of the foregoing amount to the City. If the Notice does not contain the Borrower's or the Permitted Transferee's agreement to pay \$100,000 to the City at closing of the sale of the Project to the Permitted Purchaser and the City and/or its assignee elects to purchase the Project, then such sale and transfer to the City and/or its assignee shall be consummated within 90 days after receipt of the Notice. If the City and/or its assignee does not complete the purchase of the Project within such 90 days' period, then the Borrower or the Permitted Transferee may sell the Project to the Permitted Purchaser for the purchase price and upon the terms set forth in such offer. Not less than five (5) business days prior to the scheduled closing date for the sale of the Project, the City shall execute and deliver to the Borrower or the Permitted Transferee a quitclaim deed or other written assurances in order to release and extinguish the foregoing right of first refusal and, upon recordation of the grant deed from the Borrower or the Permitted Transferee to the Permitted Purchaser, the City shall no longer have any right of first refusal under this paragraph or otherwise with respect to any subsequent sale of the Project, except as provided below. If the Borrower or the Permitted Transferee does not complete the sale of the Project to the Permitted Purchaser, then the right of first refusal shall remain in effect. The right of first refusal shall not apply to a transfer of the Project to Fannie Mae, the Loan Servicer or any third party by foreclosure, deed in lieu of foreclosure or other comparable conversion of the lien of any deed of trust recorded against the Project, and the person who acquires title to the Project pursuant to such foreclosure, deed in lieu of foreclosure or other comparable lien conversion shall acquire the Project free and clear of the right of first refusal. As used in this and the immediately preceding paragraphs, a "Permitted Transferee" is any of: Adams & Graves, a California general partnership; Argonaut Capital Corp., a California corporation; Richard M. Adams; Darrell E. Graves, Jr.; or any entity controlled by any of the foregoing or in which any of them is the managing general partner or the managing member. Nothing contained in the Regulatory Agreement: (i) gives, or shall be construed to give, to the City and/or any assignee of the City any right to assume the obligations of the Borrower under the Reimbursement Agreement (as defined in the Indenture); (ii) requires, or shall be construed to require, Fannie Mae to continue to provide the Credit Facility (as defined in the Indenture) at any time after the Project is acquired by the City and/or its assignee pursuant to the exercise of the foregoing right of first refusal; (iii) constitutes, or be construed to constitute, a waiver of the Borrower's obligation under the Security Instrument to obtain the prior written consent of Fannie Mae, to a sale of the Project to either a Permitted Purchaser or the City and/or its assignee, (iv) shall require Fannie Mae to grant such consent; (v) constitutes, or be construed to constitute, a "Transfer" (as defined in the Security Instrument) that either may be made without Fannie Mae's prior written consent or does not constitute an "Event of Default" (as defined in the Security Instrument); or (vi) affects, limits or prejudices, in any way, the exercise by Fannie Mae of any right or remedy, including without limitation, its right to declare the Loan to be immediately due and payable, under the Security Instrument, any of the Credit Facility Documents (as defined in the Indenture), or afforded by applicable law, if the Project is sold by the Borrower or the Permitted Transferee, as applicable, to a Permitted Purchaser, the City and/or its assignee, without the prior written consent of Fannie Mae.

## **Term**

The Regulatory Agreement will become effective upon its execution and delivery. The Regulatory Agreement will remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions thereof are intended to survive the retirement of the Bonds and the expiration of the Indenture, the Loan and the satisfaction of the obligation of the Borrower under the Security Instrument. Notwithstanding the foregoing, the Trustee will have no duties or obligations under the Regulatory Agreement from and after the retirement of the Bonds and the discharge of the Indenture. The terms of the Regulatory Agreement to the contrary notwithstanding, the

Regulatory Agreement, and all and several of the terms thereof, will terminate and be of no further force and effect in the event of (a)(i) involuntary noncompliance with the provisions of the Regulatory Agreement caused by a foreclosure of the lien of the Security Instrument, or delivery of a deed in lieu of foreclosure or comparable conversion of the Loan, pursuant to which Fannie Mae or its designee or the Trustee or any other third party, as applicable, or a purchaser or transferee pursuant to such foreclosure will take possession of the Project or (ii) involuntary noncompliance with the provisions of the Regulatory Agreement caused by fire, seizure, or requisition, or change in a federal law or an action of a federal agency after the date of the Regulatory Agreement which prevents the Issuer and the Trustee from enforcing the provisions thereof, or condemnation or similar event and (b) the payment in full and retirement of the Bonds within a reasonable period thereafter; provided, however, that the preceding provisions of this sentence will cease to apply and the restrictions contained therein will be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure of the lien of the Security Instrument or the delivery of a deed in lieu of foreclosure or a comparable conversion of the Loan, the Borrower or any "related person" (within the meaning of Section 103(b) of the Code) obtains an ownership interest in the Project for federal income tax purposes. Upon the termination of all and several of the terms of the Regulatory Agreement, the parties to the Regulatory Agreement have agreed 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 will 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 such default remains uncured for a period of sixty (60) days after notice thereof is given by the Issuer, the Administrator or the Trustee to the Borrower, then the Issuer, or upon written direction of the Issuer, the Trustee on behalf of the Issuer, may take any one or more of the following steps:

- A. By mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations under the Regulatory Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer, the Administrator or the Trustee thereunder;
- B. Have access to, and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project; or
- C. 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;

provided, however, if the default is such that it can be cured, but not within sixty (60) days, the Borrower shall be entitled to a greater period of time to cure such default with the consent of the Issuer, which shall not be unreasonably withheld, in no event to exceed 6 months, if the Borrower proceeds with due diligence to cure said default and, prior to the end of the initial sixty (60) day period, delivers to the Issuer and the Trustee an Opinion of Bond Counsel to the effect that the failure to cure said default within said sixty (60) day period and the extension of the time to cure of up to 6 months will not adversely affect the continued exclusion from gross income of interest on the Bonds for federal tax purposes.

The Trustee shall have the right, but not the obligation, in accordance with the provisions of the Regulatory Agreement and the Indenture, without the consent or approval of

the Issuer, to exercise any or all of the rights or remedies of the Issuer under the Regulatory Agreement and to exercise such rights and remedies within such shorter period of time as may be required to ensure compliance with the Code; provided that prior to taking any such act the Trustee shall give the Issuer reasonable written notice, which shall not be less than thirty (30) days in advance of its intended action. All fees, costs and expenses of the Trustee incurred in taking any such action shall be the sole responsibility of the Borrower, and the Trustee shall not be obligated to take any action under the Regulatory Agreement whereby it incurs any expense or liability prior to its receipt of indemnity satisfactory to it in accordance with the Indenture.

After the Indenture has been discharged, the Issuer may act on its own behalf to declare an "Event of Default" hereunder and to exercise any of the enforcement remedies set forth above to the same extent and with the same effect as if taken by the Trustee.

### **Payment of Fees**

The Borrower shall pay the fees of the Issuer specified in the Regulatory Agreement.

### **Third-Party Beneficiary**

The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Credit Provider and are entered into for the benefit of various parties, including the Credit Provider and the City, as issuer of the Prior Bonds. The Credit Provider and the City shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Credit Provider and the City are intended to be and shall be third-party beneficiaries of the Regulatory Agreement.

## APPENDIX E

### 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. Capitalized terms used in this summary and not defined will have the meanings given those terms in the Reimbursement Agreement.

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, including certain financial and operational requirements, some of which are more restrictive with respect to the Borrower than similar covenants in the Financing Agreement. The Borrower's obligations to Fannie Mae under the Reimbursement Agreement are secured by the Security Instrument.

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.

#### **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 (as defined in the Reimbursement Agreement); or

(b) the occurrence of any Event of Default under any Transaction Document other than the Reimbursement Agreement beyond any cure period set forth in the Transaction Document; or

(c) fraud or material misrepresentation or material omission by the Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal (as defined in the Reimbursement Agreement) or any guarantor: (i) 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 (ii) in connection with (A) the application for or creation of the Loan or the credit enhancement or liquidity for the Bonds provided by the Credit Facility, (B) 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 (C) any request for Fannie Mae's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement; or

(d) a Tax Event (as that term is defined in the Indenture) occurs; or

(e) 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

(f) (i) the Borrower fails to pay when due or within any applicable grace period any amount payable by the Borrower under any Hedging Arrangement, or (ii) the occurrence of any other default or event of default, however described, by the Borrower under any Hedging Arrangement; or

(g) an "Event of Default" shall exist with respect to the certain Multifamily Deed of Trust, Assignment of Rents and Security Agreement executed by Borrower for the benefit of the trustee named therein (the "Subordinate Mortgage"), which Subordinate Mortgage secures a Multifamily Note related to the Project.

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

Upon the occurrence of an Event of Default under the Reimbursement Agreement, the Obligations (as defined in the Reimbursement Agreement) 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 to the foregoing, the Credit Provider 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 the Credit Provider against the Borrower and/or in and to the Mortgaged Property, including, but not limited to, any one or more of the following actions:

(a) 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 the Credit Provider may determine, including a request that the Trustee declare the principal of all 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;

(b) demand cash collateral or Permitted Investments in an amount equal to the maximum liability of the Credit Provider under the Credit Facility whether or not then due and payable by the Credit Provider under the Credit Facility; and

(c) exercise any rights and remedies available to the Credit Provider under the Transaction Documents.

#### **Waiver**

Fannie Mae has 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 will 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 F

### 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 mandatory 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 Financing Agreement, the Borrower shall pay Note Interest (as hereinafter defined), in arrears, beginning with the first Note Interest Payment Date (as hereinafter defined) after the month in which the Bonds are issued (the "Closing Date"). "Note Interest Payment Date" means (a) during any Weekly Variable Rate Period, 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) during any Reset Period the 15th of each calendar month following the Adjustment Date, provided that the first Note Interest Payment Date may only occur on a date which is at least 30 days after the Adjustment Date; (c) during the Fixed Rate Period, the 15th of each calendar month following the Adjustment Date, provided that the first Note Interest Payment Date at the Fixed Rate may not be the Adjustment Date; (d) each Adjustment Date; and (e) 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 (a) 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, (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.

### **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 amount of the Bonds. A redemption premium may be payable in connection with such redemption. The Borrower shall pay any prepayment premium with Available Moneys. The Credit Provider is not credit enhancing the payment of any such prepayment premium.

(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.

### **Limits on Personal Liability**

Except as otherwise provided below or any 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 (as defined in the Security Instrument) 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 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 Events of Default: (a) the Borrower’s acquisition of any property or operation of any business not permitted by the Security Instrument; or (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 (i) 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 (ii) 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 this paragraph, 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.

APPENDIX G  
FORM OF CREDIT FACILITY

**DIRECT PAY**  
**IRREVOCABLE TRANSFERABLE**  
**CREDIT ENHANCEMENT INSTRUMENT**  
(Amber Court Apartments)

December 11, 2002  
U.S. \$10,969,095.00  
Relating to Loan No. \_\_\_\_\_

U.S. Bank, N.A., as Trustee  
1420 5<sup>th</sup> Avenue, 7<sup>th</sup> Floor  
Mail Stop: PD-WA-T7CT  
Seattle, Washington 98101  
Attention: Corporate Trust Services

At the request of Amber Court Associates (“**Borrower**”), Fannie Mae (“**Fannie Mae**”) issues this direct pay irrevocable, transferable Credit Enhancement Instrument (“**Credit Enhancement Instrument**”) to U.S. Bank, N.A. (“**Trustee**”), not in its individual or corporate capacity but solely as Trustee for (i) the owners of \$10,500,000 aggregate principal amount of the ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A (the “**Tax Exempt Bonds**”), and (ii) the owners of \$335,000 aggregate principal amount of the ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T (“**Taxable Bonds**”), both issued pursuant to the Trust Indenture (“**Indenture**”) dated as of December 1, 2002 between 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.

“**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.

“**Bonds**” means the Tax-Exempt Bonds and the Taxable Bonds, collectively.

“**Business Day**” means any day other than (i) a Saturday or a Sunday, (ii) 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, (iii) 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, (iv) 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 (v) any day on which Fannie Mae is closed.

“**Certificate**” means any written certificate in the form attached to this Credit Enhancement Instrument as an Exhibit signed by one who purports to be an authorized officer of the Trustee.

“**Credit Enhancement Instrument**” means this 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 sum of \$4,000 per annum plus the amount equal to 5 basis points multiplied by the Principal Portion, as reduced from time to time in accordance with Section 8(b).

“**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 repay the Prior Loan and cause the refunding of the Prior Bonds.

“**Loan Servicer**” means initially Capri Capital Finance, LLC 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 December 1, 2002, 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.

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

“**Reimbursement Agreement**” means the Reimbursement Agreement, dated as of December 1, 2002, 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 U.S. Bank, N.A., a national banking association, 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 \$10,969,095.00 (as such amount may be reduced or reinstated from time to time in accordance with Section 8, the “**Amount Available**”), of which:

(a) up to \$10,835,000.00 (“**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; and

(b) up to \$124,677.00 (“**Interest Portion**”), or 35 days interest on the Bonds (calculated at an assumed rate on the Bonds of 12.00% 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 \$9,418.00 (“**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.

**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 Services; or

(b) telecopy to phone number (202) 752-8374, immediately followed by telephonic notice to the Vice President, Multifamily Services at telephone number (202) 752-7869.

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 December 20, 2032 ("**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 and Interest 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 35 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.

(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.** 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

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.

Remainder of page is intentionally blank.

**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 the Exhibits referred to in this Credit Enhancement Instrument.

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 Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”); \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) The Trustee demands an Advance in the amount of \$\_\_\_\_\_ under the Principal Portion of the Available Amount 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.
- (3) The principal of the Bonds (other than Excluded Bonds) that is due on [the first Business Day after the date of this Certificate] is \$\_\_\_\_\_. The amount of the Advance demanded in paragraph 2 does not exceed such amount of principal.
- (4) The amount of the Advance (a) does not exceed the Principal Portion of the Amount Available on the date of this Certificate and (b) was computed in accordance with the Bonds and the Indenture.
- (5) Upon receipt by the Trustee of the Advance, (a) the Trustee will apply the same directly for the purpose specified in paragraph 2, and (b) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in paragraph 2.
- (6) The proceeds of the Advance demanded by this Certificate will not be applied to any payment on any Excluded Bonds.
- (7) The Advance demanded by this Certificate shall be paid to the Trustee at \_\_\_\_\_ [**specify account**].

(8) Upon the payment referred to in paragraph 2, the aggregate principal amount of all Bonds outstanding will be \$\_\_\_\_\_.

(9) 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 paragraph 8 above in any period of \_\_\_\_\*\* days is \$\_\_\_\_\_.

(10) Upon the payment referred to in paragraph 2:

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

- (i) \$\_\_\_\_\_ is attributable to the Principal Portion; [and]
- (ii) \$\_\_\_\_\_ is attributable to the Interest Portion; and
- (iii) \$\_\_\_\_\_ is attributable to the Issuer's Fee Portion.

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

- (i) \$\_\_\_\_\_ will be the Principal Portion; [and]
- (ii) \$\_\_\_\_\_ will be the Interest Portion; and
- (iii) \$\_\_\_\_\_ will be the Issuer's Fee Portion.

(11) The aggregate principal amount of all Excluded Bonds outstanding 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 Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) 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.
- (3) The amount of the Advance referred to in paragraph (2) was computed in accordance with the Bonds and the Indenture and does not exceed the amount of interest that is (a) due on the Business Day following the date of this Certificate on the Bonds, and (b) the Interest Portion of the Amount Available on the date of this Certificate.
- (4) Upon receipt by the Trustee of the amount demanded by this Certificate, (a) the Trustee will apply the same directly for the purpose specified in paragraph 2 and (b) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in paragraph 2.
- (5) The proceeds of the Advance demanded by this Certificate will not be applied to any payment on any Excluded Bonds.
- (6) Payment of the amount referred to in paragraph 2 shall be made to the Trustee at **[specify account]**.

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 Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) The Trustee demands an Advance in the amount of \$ \_\_\_\_\_, consisting of (a) \$ \_\_\_\_\_ under the Principal Portion of the Amount Available to be used to pay the principal portion of the purchase price of Bonds and (b) \$ \_\_\_\_\_ 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**”).
- (3) The amount demanded pursuant to Paragraph (2) 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.
- (4) 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 2 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 2 does not exceed such amount.
- (5) On the date of this Certificate, (a) the principal portion of the Advance does not exceed the Principal Portion of the Amount Available and (b) 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.

(6) Upon receipt by the Trustee of the Advance demanded by this Certificate, (a) the Trustee will apply the same directly for the purpose specified in paragraph 2 and (b) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in paragraph 2.

(7) 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.

(8) Bonds in a principal amount equal to the Principal Portion of the Advance made under this Certificate will be delivered to **[Custodian]**<sup>1</sup> 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]**.\*

(9) Payment of the amount referred to in paragraph 2 shall be made to the Trustee at **[specify account]**. If this Certificate is dated the Business Day of its presentation and is presented before 10:30 a.m. Eastern time, payment must be made prior to 1:30 p.m. Eastern time on the same Business Day.

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

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

**Exhibit D**

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

**STAND-BY**

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

Attention: Director, Multifamily Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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) The Trustee is the Trustee under the Indenture for the holders of the Bonds.
- (2) The Borrower has failed to pay the Issuer’s Fee by **[date of annual, quarterly or monthly payment]**.
- (3) The Trustee demands an Advance in the amount of \$\_\_\_\_\_ under the Issuer’s Fee Portion of the Available Amount to be used to pay the Issuer’s Fee.
- (4) The amount of the Advance demanded (a) does not exceed the Issuer’s Fee Portion of the Amount Available and (b) was computed in accordance with the terms and conditions of the Financing Agreement dated as of December 1, 2002 among the Issuer, the Trustee and the Borrower.
- (5) Upon receipt by the Trustee of the Advance (a) the Trustee will apply the same directly for the purpose specified in paragraph 3 and (b) no portion of said amount shall be applied by the Trustee for any purpose other than as set forth in paragraph 3.
- (6) Payment of the amount referred to in paragraph 3 shall be made to the Trustee at (specify account).

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 Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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, and (ii) \$\_\_\_\_\_ is a reduction of the Interest Portion;
  - (b) after such reduction, the Amount Available will be \$\_\_\_\_\_, of which (i) \$\_\_\_\_\_ will be the Principal Portion, and (ii) \$\_\_\_\_\_ will be the Interest 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, [**Name of Borrower**] (“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

[NAME OF BORROWER]  
By: \_\_\_\_\_  
Authorized Officer

**Exhibit F**

**CERTIFICATE OF REINSTATEMENT**

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

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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 Available Amount 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 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 Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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 is 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, [**Name of Borrower**] (“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 to cancel the same.

[NAME OF BORROWER

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

**Exhibit H**

**CERTIFICATE FOR SUCCESSOR TRUSTEE**

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

Attention: Director, Multifamily Services

Re: Credit Enhancement Instrument relating to Loan No. \_\_\_\_\_ (“Credit Enhancement Instrument”) \$10,500,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A and \$335,000 ABAG Finance Authority For Nonprofit Corporations Variable Rate Demand Taxable Multifamily Housing Revenue Refunding Bonds (Amber Court Apartments) 2002 Series A-T

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 as of December 1, 2002, 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.

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

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

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