

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. The Bonds may not be sold, nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

NEW ISSUE - BOOK ENTRY ONLY

EXPECTED RATING: Standard & Poor's: "A-I[+]"  
See "RATING" herein

In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming certain representations and compliance with certain covenants and requirements described herein, interest on the Bonds is excluded from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a "substantial user" of any facilities financed with the proceeds of the Bonds or by a "related person" as such terms are used in Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"), but interest on the Bonds is an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. Bond Counsel is also of the opinion that interest on the Bonds is exempt from State of California personal income tax. See "TAX MATTERS" herein.

\$ \_\_\_\_\_ \*

**CHULA VISTA HOUSING AUTHORITY  
MULTIFAMILY HOUSING REVENUE BONDS  
(GARDEN VILLAS) SERIES 2014A**

**Dated: Date of Delivery**

**Maturity: As shown below**

The Bonds will be issued under the provisions of the Trust Indenture dated as of June 1, 2014 (the "Indenture"), between the Chula Vista Housing Authority (the "Issuer") and U.S. Bank National Association, as trustee (the "Trustee"). The Bonds will be issued for the purpose of making a loan (the "Loan") to Kiku Gardens Housing Partners, LP, a California limited partnership (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, equipping and otherwise improving an existing 100-unit apartment complex, as more fully described under "THE PROJECT AND THE PRIVATE PARTICIPANTS" herein.

The Bonds will be issued as fully registered bonds in book entry form and book entry interests in the Bonds will be available for purchase in principal amounts of \$5,000 or any integral multiple thereof. Interest on the Bonds is payable on June 1 and December 1 of each year, commencing June 1, 2014. Owners of book entry interests in the Bonds will not receive physical delivery of bond certificates. The Depository Trust Company, New York, New York ("DTC") will act as a securities depository for the Bonds. DTC, or its nominee, will receive all payments with respect to the Bonds from the Trustee. DTC is required by its rules and procedures to remit such payments to participants in DTC for subsequent disbursement to the owners of book entry interests. See "THE BONDS—Book Entry System" herein.

The Bonds, when, as and if issued will be limited obligations of the Issuer, payable solely from the revenues and other moneys assigned by the Indenture to secure that payment, which include the payments required to be made by the Borrower under the Loan Agreement dated as of June 1, 2014 (the "Loan Agreement"), between the Borrower and the Issuer.

**At all times the Bonds will be secured by Eligible Investments and Available Moneys sufficient, without need for reinvestment, to pay all of the interest on the Bonds when due and to pay the principal of the Bonds at maturity, as further described herein. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS."**

**THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS AND OTHER MONEYS PLEDGED THEREFOR UNDER THE INDENTURE. THE BONDS ARE NOT A GENERAL OBLIGATION, DEBT OR BONDED INDEBTEDNESS 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 LIABLE FOR THE PAYMENT OF THE BONDS AND THE HOLDERS OF THE BONDS DO NOT HAVE THE RIGHT TO HAVE ANY EXCISES OR TAXES LEVIED BY THE ISSUER OR BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL OF AND ANY PREMIUM AND INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER. NEITHER THE ISSUER NOR THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE WILL BE OBLIGATED TO PAY THE PRINCIPAL OF AND THE INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE ISSUER REVENUES PLEDGED UNDER THE INDENTURE.**

The Bonds are not subject to redemption prior to their stated maturity. See "THE BONDS – No Redemption" herein.

**THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. THIS COVER PAGE IS NOT INTENDED TO BE A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THIS ENTIRE OFFICIAL STATEMENT, INCLUDING THE APPENDICES ATTACHED HERETO, TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.**

<u>Maturity Date</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>CUSIP</u>
June 1, 2015	\$ _____ *	____ %	100%	

The Bonds are offered, subject to prior sale, when, as and if issued by the Issuer and accepted by the Underwriter, subject to, among other things, the approving opinion of Stradling, Yocca, Carlson & Rauth, Newport Beach, California, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by Eichner Norris & Neumann PLLC, Washington, D.C., and for the Borrower by Katten Muchin Rosenman LLP, Chicago, Illinois, and Hessel, Aluisse and Neun, P.C., Washington, D.C.. It is expected that the Bonds will be available for delivery in definitive form on or about June \_\_, 2014 through the services of DTC against payment therefor.



The date of this Official Statement is \_\_\_\_\_, 2014.

\*Preliminary; subject to change.

## **REGARDING THIS OFFICIAL STATEMENT**

This Official Statement does not constitute an offering of any security other than the original offering of the Bonds identified on the cover hereof. No person has been authorized to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such other information or representations must not be relied upon as having been authorized. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, and there shall not be any sale of the Bonds by any person, in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. The information and expression of opinions herein are subject to change without notice and neither the delivery of this Official Statement nor the sale of any of the Bonds shall, under any circumstances, create any implication that the information herein is correct as of any time subsequent to the date hereof.

Information herein has been obtained from the Issuer (only as to the Sections labeled “The Issuer” and “No Litigation” as it pertains to the Issuer) and the Borrower and other sources believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Underwriter.

The Issuer has not confirmed, and assumes no responsibility for, the accuracy, completeness, sufficiency or fairness of any statements in the Official Statements or any amendments thereof or supplements thereto, other than in the Sections labeled “The Issuer” and “No Litigation” as it pertains to the Issuer, and or in any reports, financial information, offering or disclosure documents or other information relating to the Underwriter, the Project, the Borrower, or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or contained otherwise in the Official Statement.

The Trustee has neither reviewed nor participated in the preparation of this Official Statement, except for the contents of the Section labeled “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 a 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.

Upon issuance, the Bonds will not be registered by the Issuer under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the accuracy or adequacy of this Official Statement or, other than the Issuer (to the extent described herein) approved the Bonds for sale.

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

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## OFFICIAL STATEMENT

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### CHULA VISTA HOUSING AUTHORITY MULTIFAMILY HOUSING REVENUE BONDS (GARDEN VILLAS) SERIES 2014A

#### INTRODUCTION

This Official Statement, including the Appendices, is furnished in connection with the original issuance and sale by the Chula Vista Housing Authority (the “Issuer”) of the Bonds identified on the cover page (the “Bonds”). The Bonds are being issued by the Issuer pursuant to a Trust Indenture (the “Indenture”) dated as of June 1, 2014 between the Issuer and U.S. Bank National Association, as Trustee (the “Trustee”). The Trustee is expected to also serve as Registrar. Capitalized terms used but not otherwise defined herein are defined in Appendix A.

The Issuer will loan the proceeds of the sale of the Bonds to Kiku Gardens Housing Partners, LP, a California limited partnership (the “Borrower”), pursuant to the Loan Agreement (the “Loan Agreement”) dated as of June 1, 2014, between the Issuer and the Borrower to pay a portion of the costs of acquiring, rehabilitating, equipping and otherwise improving an existing 100-unit Section 8 subsidized apartment complex presently known as Garden Villas (the “Project”), to be owned by the Borrower. See “THE PROJECT AND THE PRIVATE PARTICIPANTS.” Pursuant to the Loan Agreement, the Borrower has agreed to make payments to the Issuer in amounts sufficient to pay the principal of and interest on the Bonds when due (the “Bond Debt Service Charges”) to the extent that amounts otherwise available for such payment are insufficient therefor. The Loan will be evidenced by a promissory note in the principal amount of \$ \_\_\_\_\_ \* (the “Note”) from the Borrower to the Trustee. The Loan Agreement, except for Unassigned Issuer’s Rights, will be assigned without recourse by the Issuer to the Trustee.

To provide and secure funds for the repayment of the Loan, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the Freddie Mac Loan from the Freddie Mac Lender. Subject to the conditions set forth in the Freddie Mac Loan Documents, the Freddie Mac Lender will pay \$ \_\_\_\_\_ \* from the proceeds of the Freddie Mac Loan to the Trustee for deposit into the Collateral Fund to enable the Trustee to disburse an equal amount of Bond proceeds from the Project Fund as approved by the Freddie Mac Lender. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein. None of the owners of the Bonds, the Trustee or the Issuer will have rights with respect to the Freddie Mac Loan or under the Freddie Mac Loan Documents. Furthermore, none of the owners of the Bonds, the Trustee or the Issuer will have a lien on any funds, accounts or reserves established, maintained and/or collected by the Freddie Mac Lender in connection with the Freddie Mac Loan. Freddie Mac does not provide enhancement with respect to the Loan or the Bonds.

It is anticipated that the aggregate funds on deposit in the Project Fund and the Collateral Fund will, at all times, equal the principal amount of Bonds Outstanding. It is anticipated that interest on the Bonds will be paid from amounts on deposit in the Initial Deposit Account of the Bond Fund and that the Bond Debt Service Charges will otherwise be paid from amounts on deposit in the Collateral Fund, the Bond Fund (including the Initial Deposit Account of the Bond Fund) and the Project Fund (collectively, the “Special Funds”), and investment earnings thereon. Amounts on deposit in the Special Funds will be invested in Eligible Investments. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

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\* Preliminary; subject to change.

The Bonds shall bear interest on the outstanding principal amount thereof at a rate equal to \_\_\_\_% per annum from their date, payable on each June 1 and December 1, commencing December 1, 2014 (each an "Interest Payment Date").

The Bonds are limited obligations of the Issuer, and the principal of and interest thereon will be payable solely from the revenues and other moneys assigned by the Indenture to secure such payment. **At all times the Bonds will be secured by Eligible Investments and Available Moneys sufficient, without need for reinvestment, to pay all of the interest on the Bonds when due and to pay the principal of the Bonds at maturity, as further described herein. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "PLAN OF FINANCING" herein.**

The Borrower will be required to operate the Project in compliance with a Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") dated as of June 1, 2014, by and among the Issuer, the Trustee and the Borrower. The Regulatory Agreement requires, among other things, that the Project be operated as a qualified residential rental project with at least 30% of completed units of the Project occupied by Low Income Tenants, *i.e.*, tenants whose income does not exceed sixty percent (60%) of the area median gross income ("AMI"), adjusted for family size, during the Qualified Project Period in accordance with Section 142(d) of the Code, and at least 10% of completed units of the Project occupied by Very Low Income Tenants, *i.e.*, tenants whose income does not exceed fifty percent (50%) of AMI, adjusted for family size, during the Qualified Project Period in accordance with Section 142(d) of the Code. Failure to comply with these requirements could result in the loss of the federal tax exemption of the Bonds retroactive to their date of issuance. See "TAX MATTERS" and "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT." In addition to the rental restrictions imposed upon the Project by the Regulatory Agreement, the Project will be further encumbered by a tax credit restrictive covenant (the "Tax Credit Extended Use Agreement"), to be executed by the Borrower in connection with the low-income housing tax credits (the "LIHTCs") anticipated to be granted for the Project and in compliance with the requirements of Section 42 of the Code. See "THE PROJECT AND THE PRIVATE PARTICIPANTS."

Brief descriptions of the Issuer, the Project, the Borrower, the use of proceeds of the Bonds and the Bonds together with summaries of the Indenture, the Loan Agreement and the Regulatory Agreement are provided below. All information with respect to the Borrower and the Project contained in this Official Statement has been furnished by the Borrower. The descriptions and summaries of the Loan Agreement, the Indenture and the Regulatory Agreement and other documents contained herein do not purport to be comprehensive or definitive and are qualified in their entirety by reference to those documents, and all references to the Bonds are qualified in their entirety by the definitive forms thereof included in the Indenture. See "MISCELLANEOUS" for the availability of those documents.

## THE ISSUER

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

The Issuer is the Chula Vista Housing Authority, a public body, corporate and politic duly organized and existing under the laws of the State of California. The Issuer is authorized to issue the Bonds and to loan the proceeds thereof to the Borrower for the purpose of financing the Project. The

Issuer was created in 1993. Members of the City Council of the City of Chula Vista serve as the five-member Board of Directors of the Issuer.

The Bonds are special limited obligations of the Issuer, payable solely from and secured by the pledge of revenues pursuant to the Indenture. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

Upon delivery of the Bonds, the Issuer will have approved the Indenture and the issuance of the Bonds. The Issuer has not prepared any material for inclusion in this Official Statement except the material under this heading and under the heading “NO LITIGATION – The Issuer.”

**PLAN OF FINANCING\***

The sources and uses of funds for the Project are projected to be approximately as follows:

<b>Sources of Funds*</b>	
Bond Proceeds	\$8,000,000
Taxable Loan Proceeds (in excess of Bond Proceeds)	3,300,000
Deferred Developer Fee	140,000
Low Income Housing Tax Credit Proceeds	4,630,000
Capitalized Interest Paid from Operations	65,000
Release of Replacement Reserves	<u>494,990</u>
<b>Total</b>	<b><u>\$16,629,990</u></b>
<b>Uses of Funds*</b>	
Land and Building Costs	\$ 8,000,000
Renovation Costs	4,250,000
Indirect Costs	2,694,277
Developer Fees	1,685,713
<b>Total</b>	<b><u>\$16,629,990</u></b>

Simultaneously with the closing and issuance of the Bonds, the Borrower will obtain a mortgage loan (the “Freddie Mac Loan”) in the amount of \$11,300,000\*from Citibank, N.A., a national banking association (the “Freddie Mac Lender”), to provide for the acquisition of and permanent financing for the Project. The Freddie Mac Loan is to bear interest at the rate of \_\_\_% per annum. Subject to the conditions set forth in the Freddie Mac Loan Documents, a portion of the Freddie Mac Loan proceeds equal to the aggregate principal amount of the Bonds will be disbursed on the Closing Date by the Freddie Mac Lender to the Trustee on behalf of the Borrower for deposit into the Collateral Fund under the Indenture. The Freddie Mac Loan will be evidenced by a Multifamily Note (the “Freddie Mac Borrower Note”) made by the Borrower in favor of the Freddie Mac Lender and secured by a first-lien priority Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “Freddie Mac Mortgage”) on the Project. None of the owners of the Bonds, the Trustee or the Issuer will have rights with respect to the Freddie Mac Loan or under the Freddie Mac Loan Documents. Furthermore, none of the owners of the Bonds, the Trustee or the Issuer will have a lien on any funds, accounts or reserves established, maintained and/or collected by the Freddie Mac Lender in connection with the Freddie Mac Loan. Freddie Mac does not provide enhancement with respect to the Loan or the Bonds.

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\* Preliminary; subject to change.

The Bonds will be initially secured by their own proceeds to be deposited in the Project Fund under the Indenture (plus the Initial Deposit to the Initial Deposit Account to cover capitalized interest on the Bonds through the Maturity Date). The proceeds of the Loan will be disbursed to the Borrower on the Closing Date to pay Project costs upon the deposit of a like amount of Freddie Mac Loan proceeds in the Collateral Fund. The Bonds will thus remain at all times 100% collateralized by Eligible Investments and Available Moneys on deposit in the Special Funds under the Indenture.

The Issuer has directed the Trustee to deposit all payments made by the Borrower pursuant to the Note and the Loan Agreement into the Bond Fund established and maintained pursuant to the Indenture. Bond Debt Service Charges shall be payable as they become due, in the case of interest (i) in the first instance from the money on deposit in the Initial Deposit Account of the Bond Fund, (ii) next from other money on deposit in the Bond Fund, (iii) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, and (iv) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund. Investments of money in the Bond Fund and the Collateral Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay Bond Debt Service Charges on the Bonds as they become due on each Interest Payment Date or at stated maturity. Each investment of money in the Project Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund will be credited to the Bond Fund. See “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Application of Loan Payments, Disbursements from the Project Fund, Bond Fund and Investment of Special Funds and Rebate Fund.”

In addition, on the Closing Date as described under the caption “THE PROJECT AND THE PRIVATE PARTICIPANTS” below, CREA Garden Villas, LLC, a Delaware limited liability company (the “Investor Limited Partner”), will acquire a limited partnership interest in the Borrower intended to allow the Investor Limited Partner to claim 99.989% of LIHTCs available to the Borrower in exchange for the Investor Limited Partner’s agreement to fund equity in the approximate amount of \$4,632,799\*.

## **THE PROJECT AND THE PRIVATE PARTICIPANTS**

*The information under this caption has been provided solely by the Borrower and has not been independently verified by the Issuer, the Trustee, the Underwriter, Freddie Mac, the Servicer or any of their respective counsel, members, officers or employees or Bond Counsel. No representation whatsoever as to the accuracy, adequacy or completeness of such information is made by the Issuer, the Trustee, the Underwriter, Freddie Mac, the Servicer or any of their respective counsel, members, officers or employees or Bond Counsel.*

### **The Project**

Garden Villas is a 100-unit affordable senior project located at 1260 3rd Avenue, Chula Vista, California. Built in 1983, Garden Villas consists of one 3-story, elevator-served building. The 3.32 acre site also has a maintenance building.

The rehabilitation of the Project is expected to last from June 2014-December 2014. Hard construction costs are estimated to be \$3.1\* million and will include a new roof, fire sprinkler installation, upgrades to the community rooms, new hot water boilers, energy efficient windows and appliances, cabinets, countertops, and kitchen flooring. The building includes a community dining room with commercial kitchen on the first floor, full time service coordinator, two lounge areas with one including a

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\* Preliminary; subject to change.

computer room, a library, exercise space located at the ends of each floor, and one laundry room on the second floor. The site is also improved with a maintenance building, a courtyard/picnic area, a community garden, 76 surface parking spaces, and a gated perimeter.

<u>Number of Units</u>	<u>Composition</u>	<u>S.F. (approx.)</u>
100	1 Bedroom – 1 Bath	571

The Project consists of 100 units which 99 units are subject to an existing HAP contract (the “HAP Contract”). The remaining unit is a manager’s unit. At closing the Project will continue to benefit from the HAP Contract.

**The HAP Contract**

Funding under the HAP Contract is subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the United States Housing Act of 1937, as amended, and in the case of Section 8 contracts is administered by contract administrators or HUD. Renewals of Section 8 HAP contracts are governed by the Multifamily Housing Mortgage and Assistance Restructuring Act, as amended (“MAHRA”). The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income for the area as determined by HUD), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the “contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in MAHRA and the HAP Contract, are the “contract rents” for the Project. The HAP Contract will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of the HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under the HAP Contract, or take other sanctions. MAHRA requires that upon the request of the Borrower, HUD shall renew the HAP Contract under the Section 8 Program. However, because the HAP Contract is subject to receipt of annual appropriations by Congress, there is no assurance that the HAP Contract will be renewed or replaced upon its expiration. Funding for HAP contracts is appropriated by Congress on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues sufficient to pay the principal of and interest of the Loan.

**The Borrower**

The Borrower is Kiku Gardens Housing Partners, LP, a California limited partnership, formed for the sole purpose of acquiring, rehabilitating and operating the Project. The managing general partner of the Borrower is Hearthstone Housing Foundation (the “General Partner”) owning a .005% ownership interest in the Borrower. Kiku Gardens Development, LLC, a California limited liability company (the



“Special Limited Partner”), is a limited partner of Borrower and will own a .005% ownership interest in the Borrower. The Investor Limited Partner will be admitted as a limited partner of Borrower and will own a 99.989% interest in Borrower and an affiliate of Investor Limited Partner will hold a 0.01% limited partnership interest in Borrower as a class A special limited partner.

The Special Limited Partner has substantial real estate development experience.

The General Partner was founded in California in 1992 and is qualified to do business in California, Oregon, Texas and Washington. It received a determination letter from the Internal Revenue Service stating that it is exempt from income tax as a non-profit corporation organized for charitable purposes under Internal Revenue Code §501(c)(3) and currently serves as a general partner or managing member of over 175 limited partnership or limited liability company owners of apartment complexes with rent and tenant income restricted units located in California, Oregon, Texas and Washington.

The Borrower has not acquired and does not intend to acquire any substantial assets or engage in any substantial business activities other than those related to the Project. However, affiliates of the Borrower may engage in the acquisition, development, ownership and management of other senior apartment projects that may compete with the Project.

## **Regulatory Agreements**

***Bond Regulatory Agreement.*** The Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”) imposes certain requirements with respect to the tax exempt status of the Bonds under the Code, which include a set aside of at least 30% of the units for rental to persons or families having incomes at or below 60% of area median gross income, adjusted for family size and determined in accordance with Section 142(d) of the Code, with monthly rent restricted to one twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of area gross median income, and at least 10% of the units for rental to persons or families having incomes at or below 50% of area median gross income, adjusted for family size and determined in accordance with Section 142(d) of the Code, with monthly rent restricted to one twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of area gross median income, for a period not less than fifty-five (55) years. See “APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT” for a description of the requirements affecting the operation of the Project in order to assume compliance with the Code.

***Tax Credit Regulatory Agreement.*** In connection with the sale of low-income housing tax credits by the Borrower, the Borrower will execute a Tax Credit Regulatory Agreement with the California Tax Credit Allocation Committee in accordance with Section 42 of the Code. Pursuant to this agreement, the Borrower must, among other things, rent 100 of the residential rental units (including one manager’s unit) in the Project to individuals or households earning 60% or less of area median gross income for the area in which the Project is located, [and 16 of the residential rental units in the Project to individuals or households earning 50% or less of area median gross income for the area in which the Project is located], in each instance adjusted for household size, as determined by the United States Department of Housing and Urban Development. Monthly rents on such units in the Project are limited to 1/12 of 30% of 60% or 50%, as applicable, of the applicable area median gross income for the area in which the Project is located, adjusted for an imputed household size. The tenant income limits and rental restrictions under Section 42 of the Code assume that studio apartments are occupied by one person and that one-bedroom apartments are occupied by an average of 1.5 persons. Violation of the tax credit covenants and restrictions may result in loss or recapture of tax credits and penalties against the partners of the Borrower, among other things.

## **Project Management**

The Manager of the Project will be Royal Property Management (the “Manager”). The Manager obtained its first client on June 1, 1995. Over the intervening years has steadily increased its portfolio of properties under management. The Manager currently manages 20 buildings throughout three counties. Eleven of its buildings are HUD insured apartment complexes, four are public housing sites, and four are tax credit properties. The Manager has received high REAC scores and has done well on its occupancy reviews.

The Manager strives to maintain quality affordable housing, emphasizing residential services while promoting residents to play an active role in their community. The Manager prides itself in developing Communities of Helping Hands, which has motivated families and individuals to work in partnership, in the improvement of properties, resident services and community enhancement.

## **Limited Recourse to Borrower**

The Borrower and its partners will not (subject to certain exceptions to nonrecourse liability set forth in the Reimbursement Agreement) be personally liable for payments on the Bond Mortgage 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 Reimbursement Agreement) be personally liable under the other documents executed in connection with the issuance of the Bonds and the making of the Bond Mortgage Loan. Furthermore, no representation is made that the Borrower will have substantial funds available for the Project. Accordingly, neither the Borrower’s financial statements nor those of its partners are included in this Official Statement.

## **THE BONDS**

### **General**

The Bonds will be dated, will be payable in the amounts and on the dates, will bear interest (computed on the basis of a 360-day year) at the rates and payable on the dates, and will mature as described on the cover page. The Bonds will be issued as fully registered bonds in book entry form and book entry interests in the Bonds will be available for purchase in principal amounts of \$5,000 or any integral multiple thereof.

The Trustee, in its capacity as Registrar, will keep all books and records necessary for registration, exchange and transfer of the Bonds.

Discussion of the Bonds being issued only under the Book Entry System is provided below. Details regarding the procedures for and manner of payment, issuance, exchange and transfer of the Bonds if ever issued in certificated form as provided in the Bond proceedings are also stated below.

### **Book Entry System**

*The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that the Borrower believes to be reliable, but neither the Issuer nor the Borrower take responsibility for the accuracy thereof.*

The Depository Trust Company, New York, New York (“DTC”), will act as securities depository for the Bonds. The Bonds will be initially issued and issuable only as one fully registered Bond

certificate for each maturity, registered in the name of Cede & Co. as partnership nominee of DTC. Those fully registered Bonds will be deposited with and retained in the custody of DTC.

For ease of reference in this and other discussions, reference to “DTC” includes when applicable any successor securities depository and the nominee of the depository.

For all purposes under the Bond proceedings, DTC will be and will be considered by the Issuer and the Trustee to be the owner or Holder of the Bonds.

Owners of book entry interests in the Bonds (book entry interest owners) will not receive or have the right to receive physical delivery of Bonds, and will not be or be considered by the Issuer and the Trustee to be, and will not have any rights as, owners or holders of Bonds under the Bond proceedings.

DTC is a limited-purpose trust company organized under, and a “banking organization” within the meaning of, the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants (“Direct Participants”) deposit with DTC. DTC also facilitates the 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, Inc., 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 (“Indirect Participants”). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (the book entry interest owner) is in turn to be recorded on the Direct and Indirect Participant’s records. Book entry interest owners will not receive written confirmation from DTC of their purchase, but 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 book entry interest owner 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 book entry interest owners. Book entry interest 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 (see “Revision of Book Entry System; Replacement Bonds”).

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co. The deposit of Bonds with DTC and their registration in the name of Cede & Co. effect no change in actual ownership. DTC has no knowledge of the book entry interest owners (or 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 book entry interest owners. 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 book entry

interest owners, will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Debt service payments on the Bonds will be made by the Trustee to DTC. DTC's practice is to credit Direct Participants' accounts on the 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 the payable date. Payments by Participants to book entry interest 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 Trustee, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of debt service to DTC is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the book entry interest owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the Trustee. The Issuer may decide to discontinue use of the book entry system if DTC (or a successor securities depository) determines not to continue to act as securities depository for the Bonds. See "Revision of Book Entry System; Replacement Bonds."

The information above in this section concerning DTC and DTC's book entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for its accuracy.

***Direct Participants and Indirect Participants may impose service charges on book entry interest owners in certain cases. Purchasers of book entry interests should discuss that possibility with their brokers.***

The Issuer, the Borrower and the Trustee have no role in the purchases, transfers or sales of book entry interests. The rights of book entry interest owners to transfer or pledge their interests, and the manner of transferring or pledging those interests, may be subject to applicable state law. Book entry interest owners may want to discuss with their legal advisers the manner of transferring or pledging their book entry interests.

The Issuer, the Borrower and Trustee have no responsibility or liability for any aspects of the records or notices relating to, or payments made on account of, book entry interest ownership, or for maintaining, supervising or reviewing any records relating to that ownership.

The Issuer and the Borrower cannot and do not give any assurances that DTC, Direct Participants, Indirect Participants or others will distribute to the book entry interest owners payments of debt service on the Bonds made to DTC as the registered owner, or any notices, or that they will do so on a timely basis, or that DTC will serve and act in a manner described in this Official Statement.

### **Revision of Book Entry System; Replacement Bonds**

Replacement Bonds ("Replacement Bonds") may be issued directly to the owners of Bonds other than a depository, or its nominee, but only in the event that (a) the depository determines not to continue to act as securities depository for the Bonds (which determination shall become effective no less than 90 days after written notice to such effect to the Issuer and the Trustee); or (b) the Issuer has advised a depository of its determination (which determination is conclusive as to the depository and owners of the Bonds) that the depository is incapable of discharging its duties as securities depository for the Bonds; or (c) the Issuer has determined (which determination is conclusive as to the depository and the owners of

the Bonds) that the interests of the beneficial owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Issuer and the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Issuer and the Borrower fail to locate another qualified securities depository to replace the depository, the Issuer and the Borrower, at the Borrower's expense, shall cause to be authenticated and delivered Replacement Bonds, in certificate form, to the owners of the Bonds. In the event that the Issuer makes the determination noted in (b) or (c) above (provided that the Issuer undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any such determination), and has made provisions to notify the owners of Bonds of such determination by mailing an appropriate notice to the depository, the Issuer and the Borrower shall cause to be issued Replacement Bonds in certificate form to the owners of Bonds as shown on the records of the depository provided to the Issuer.

Debt service on Replacement Bonds will be payable when due without deduction for the services of the Trustee as paying agent. Principal will be payable to the registered owner upon presentation and surrender of the Bonds then due and payable at the designated corporate trust office of the Trustee. Interest will be payable on the interest payment date by the Trustee by check, mailed to the registered owner of record on the Register at the close of business on the 15th day of the month preceding the interest payment date.

Replacement Bonds will be exchangeable for Replacement Bonds of authorized denominations, and transferable, at the designated office of the Trustee without charge (except taxes or governmental fees).

#### **No Redemption**

The Bonds shall not be subject to redemption prior to the Maturity Date thereof and the Borrower shall not have an option to prepay the Note prior to the Bond Maturity Date.

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

**At all times the Bonds will be secured by Eligible Investments and Available Moneys sufficient, without need for reinvestment, to pay all of the interest on the Bonds when due and to pay the principal of the Bonds at maturity, as further described herein.**

To the extent provided in and except as otherwise permitted by the Indenture, (i) the Bonds will be special obligations of the Issuer and the Bond Debt Service Charges thereon shall be payable equally and ratably solely from the Issuer Revenues, including but not limited to moneys and investments in the Special Funds, (ii) the payment of Bond Debt Service Charges on the Bonds shall be secured by the assignment of Issuer Revenues under and by the Indenture, and (iii) payments due on the Bonds also shall be secured by the Note. Issuer Revenues include the payments required to be made by the Borrower under the Loan Agreement and the Note; all other moneys received by the Issuer or the Trustee for the account of the Issuer with respect to repayment of the Loan; moneys and investments in or allocated to the Special Funds; and the income and profit from the investment of the Loan Payments and such other moneys, and the investments of those moneys.

The Issuer has directed the Trustee to fund the Collateral Fund pursuant to the terms of the Indenture. Pursuant to the Indenture, to the extent funds available in the Bond Fund and the Project Fund on any Loan Payment Date are insufficient to pay Bond Debt Service Charges on any Interest Payment Date, funds on deposit in the Collateral Fund will be transferred to the Trustee to pay the Bond Debt

Service Charges. Amounts so transferred from the Collateral Fund shall be a credit to the Borrower against the Loan Payments due pursuant to the Loan Agreement and the Note.

The funds on deposit in the Special Funds will be invested in Eligible Investments. No fees of the Issuer or the Trustee will be payable from the Issuer Revenues.

**THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS AND OTHER MONEYS PLEDGED THEREFOR UNDER THE INDENTURE. THE BONDS ARE NOT A GENERAL OBLIGATION, DEBT OR BONDED INDEBTEDNESS 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 LIABLE FOR THE PAYMENT OF THE BONDS AND THE HOLDERS OF THE BONDS DO NOT HAVE THE RIGHT TO HAVE ANY EXCISES OR TAXES LEVIED BY THE ISSUER OR BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL OF AND ANY PREMIUM AND INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER. NEITHER THE ISSUER NOR THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE WILL BE OBLIGATED TO PAY THE PRINCIPAL OF AND THE INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE ISSUER REVENUES PLEDGED UNDER THE INDENTURE.**

#### **THE TRUSTEE**

*The information under this heading has been provided solely by the Trustee and has not been independently verified. No representation whatsoever as to the accuracy, adequacy or completeness of such information is being made.*

U.S. Bank National Association 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.

#### **CERTAIN BONDHOLDERS' RISKS**

*The following is a summary of certain risks associated with a purchase of the Bonds. There are other possible risks not discussed below. The Bonds are payable from the payments to be made by the Borrower under the Loan Agreement and the Note, and from amounts on deposit in the Special Funds and the interest earnings thereon. The Borrower's obligation to make payments pursuant to the Loan Agreement and the Note are nonrecourse obligations with respect to which the Borrower and its partners have no personal liability (except as otherwise provided in the Note) and as to which the Borrower and its partners have not pledged any of their respective assets.*

#### **General**

Payment of the Bond Service Charges, and the Borrower's obligations with respect to the Bond Service Charges, will be primarily secured by and payable from Bond proceeds held in the Project Fund

and moneys deposited into the Collateral Fund and the Bond Fund, including the Initial Deposit Account held in the Bond Fund. Although the Borrower will execute the Note to evidence its obligation to repay the Loan, it is not expected that any revenues from the Project or other amounts, except moneys in the Special Funds, will be available to satisfy that obligation. The Indenture requires the Trustee to verify, before any disbursement of funds from the Project Fund, that the sum of the funds on deposit in the Project Fund and the Collateral Fund is at least equal to the then outstanding principal amount of the Bonds. It is expected that funds on deposit in the Collateral Fund and Initial Deposit Account of the Bond Fund, and the interest earnings thereon will be sufficient to pay the debt service on the Bonds.

### **Limited Security for Bonds**

The Bonds are not secured by the Project or any mortgage on the Project. Investors should look exclusively to amounts on deposit in the Special Funds under the Indenture and investment earnings on each as the source of payment of debt service on the Bonds.

### **Issuer Limited Liability**

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

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS AND OTHER MONEYS PLEDGED THEREFOR UNDER THE INDENTURE. THE BONDS ARE NOT A GENERAL OBLIGATION, DEBT OR BONDED INDEBTEDNESS 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 LIABLE FOR THE PAYMENT OF THE BONDS AND THE HOLDERS OF THE BONDS DO NOT HAVE THE RIGHT TO HAVE ANY EXCISES OR TAXES LEVIED BY THE ISSUER OR BY THE STATE OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF THE PRINCIPAL OF AND ANY PREMIUM AND INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER. NEITHER THE ISSUER NOR THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE WILL BE OBLIGATED TO PAY THE PRINCIPAL OF AND THE INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE ISSUER REVENUES PLEDGED UNDER THE INDENTURE.

### **Enforceability of Remedies upon an Event of Default**

The remedies available to the Trustee and the owners of the Bonds upon an Event of Default under the Indenture, the Loan Agreement, the Tax Regulatory Agreement or any other document described herein are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under such documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

### **Tax Exemption**

In the event the Borrower does not maintain the Project as a “qualified residential rental project” for the Qualified Project Period, the interest on the Bonds may be or become taxable from the date of

original issuance to the Holders of the Bonds for federal income tax purposes. Such an event will not constitute an immediate default under the Loan and is not the basis for an increase in the rate of interest payable on the Bonds or give rise to the payment to the owners of the Bonds of any amount denoted as “supplemental interest,” “additional interest,” “penalty interest,” “liquidated damages” or otherwise, in addition to the amounts payable to the owners of the Bonds prior to the occurrence of the event which results in the interest payable on the Bonds being includable, for federal income tax purposes, in the gross income of the owners of the Bonds.

### **Secondary Markets and Prices**

No representation is made concerning the existence of any secondary market for the Bonds. The Underwriter will not be obligated to repurchase any of the Bonds, nor can any assurance be given that any secondary market will develop following the completion of the offering of the Bonds. Further, there can be no assurance that the initial offering prices for the Bonds will continue for any period of time. Furthermore, the Bonds should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

### **Summary**

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

## **NO LITIGATION**

### **The Issuer**

At the time of delivery and payment for the Bonds, the Issuer will deliver, or cause to be delivered, a certificate of the Issuer substantially to the effect that there is no litigation or other proceeding now pending or threatened against the Issuer of which the Issuer has notice or, to the knowledge of the Issuer, any basis therefor, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Bonds, or in any way contesting or affecting the validity of the Bonds or any proceedings of the Issuer taken with respect to the issuance or sale thereof or the financing of the Loan or the pledge or application of any moneys or security provided for the payment of the Bonds or the existence or powers of the Issuer, or contesting in any material respect the completeness or accuracy of the Official Statement or any supplement or amendment thereto, or challenging the exclusion of interest on the Bonds from gross income for Federal income tax purposes.

### **The Borrower**

The Borrower has represented that there is no litigation now pending or threatened that if decided adversely to the interests of the Borrower would have a material adverse effect on the operations or financial position of the Borrower.

## **UNDERWRITING**

Pursuant and subject to the terms and conditions set forth in a Bond Purchase Agreement (the “Bond Purchase Agreement”), among Citigroup Global Markets Inc. (the “Underwriter”), the Issuer and the Borrower, the Underwriter has agreed to purchase the Bonds at the price of \_\_\_% of the original principal amount of the Bonds. For its services relating to the transaction, the Underwriter will receive a



fee of \$\_\_\_\_\_\*. From its fees, the Underwriter will be obligated to pay certain costs and expenses of the financing.

The Underwriter's obligations are subject to certain conditions precedent, and the Underwriter will purchase all the Bonds, if any are purchased. Pursuant to the Bond Purchase Agreement, the Borrower has agreed to indemnify the Underwriter and the Issuer against certain civil liabilities, including liabilities under federal securities laws. It is intended that the Bonds will be offered to the public initially at the offering prices set forth on the cover page of this Official Statement and that such offering prices subsequently may change without any requirement of prior notice. The Underwriter may offer the Bonds to other dealers at prices lower than those offered to the public.

The Underwriter has entered into a retail distribution agreement with each of TMC Bonds L.L.C. ("TMC") and UBS Financial Services Inc. ("UBSFS"). Under these distribution agreements, the Underwriter may distribute municipal securities to retail investors through the financial advisor network of UBSFS and the electronic primary offering platform of TMC. As part of this arrangement, the Underwriter may compensate TMC (and TMC may compensate its electronic platform member firms) and UBSFS for their selling efforts with respect to the Bonds.

The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The Underwriter and its affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the Issuer for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriter and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the Issuer.

## **MULTIPLE ROLES OF PARTIES**

Citibank, N.A., an affiliate of the Underwriter, is originating and servicing the Freddie Mac Loan and is being separately compensated for its service in such capacity. Citigroup Global Markets Inc. will serve as the Underwriter for the Bonds. Conflicts of interest could arise by reason of the different capacities in which Citigroup Global Markets Inc. and its affiliates act in connection with the Bonds and the Freddie Mac Loan.

## **TAX MATTERS**

In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California ("Bond Counsel"), under existing statutes, regulations, rulings and judicial decisions, and assuming certain representations and compliance with certain covenants and requirements described herein, interest on the Bonds is excluded from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a "substantial user" of any facilities financed with the proceeds of the Bonds or by a "related person" as such terms are used in Section 147(a) of the Code, but interest on the Bonds is an item of tax preference for purposes of

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\* Preliminary; subject to change.

calculating the federal alternative minimum tax imposed on individuals and corporations. Bond Counsel is also of the opinion that interest on the Bonds is exempt from State of California personal income tax.

Bond Counsel's opinion as to the exclusion from gross income of interest on the Bonds is based upon certain representations of fact and certifications made by the Issuer, the Borrower, and others and is subject to the condition that the Issuer and Borrower comply with all requirements of the Code, that must be satisfied subsequent to the issuance of the Bonds, to assure that interest on the Bonds will not become included in gross income for federal income tax purposes. In particular, the Code includes a requirement that a certain percentage of rental units in the Project financed by the Bonds be occupied by persons as specified income levels continuously during a period specified under the Code, and that such Project be rented or available for rental on a continuous basis during a period specified under the Code. Failure to comply with such requirements of the Code might cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. The Issuer and Borrower have covenanted to comply with all such requirements.

The Internal Revenue Service (the "IRS") has initiated an expanded program for the auditing of tax-exempt bond issues, including both random and targeted audits. It is possible that the Bonds will be selected for audit by the IRS. It is also possible that the market value of the Bonds might be affected as a result of such an audit of the Bonds (or by an audit of other similar bonds). It is also possible that the market value of the Bonds might be affected as a result of such an audit of the Bonds (or by an audit of similar bonds). No assurance can be given that, in the course of an audit, as a result of an audit, or otherwise, Congress or the IRS might not change the Code (or interpretation thereof) subsequent to the execution and delivery of the Bonds to the extent that it adversely affects the exclusion from gross income of interest on the Bonds or their market value.

Bond Counsel's opinions may be affected by actions taken (or not taken) or events occurring (or not occurring) after the Closing Date. Bond Counsel has not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate relating to the Bonds permit certain actions to be taken or to be omitted if a favorable opinion of Bond Counsel is provided with respect thereto. Bond Counsel expresses no opinion as to the effect on the exclusion from gross income of interest on the Bonds for federal income tax purposes with respect to any Bond if any such action is taken or omitted based upon the advice of counsel other than Stradling Yocca Carlson & Rauth, a Professional Corporation.

Although Bond Counsel has rendered an opinion that interest on the Bonds is excluded from gross income for federal income tax purposes provided the Issuer and Borrower continue to comply with certain requirements of the Code, the ownership of the Bonds and the accrual or receipt of interest with respect to the Bonds may otherwise affect the tax liability of certain persons. Bond Counsel expresses no opinion regarding any such tax consequences. Accordingly, before purchasing any of the Bonds, all potential purchasers should consult their tax advisors with respect to collateral tax consequences relating to the Bonds.

**SUBSEQUENT TO THE ISSUANCE OF THE BONDS, THERE MIGHT BE FEDERAL, STATE OR LOCAL STATUTORY CHANGES (OR JUDICIAL OR REGULATORY INTERPRETATIONS OF FEDERAL, STATE OR LOCAL LAW) THAT AFFECT THE FEDERAL, STATE OR LOCAL TAX TREATMENT OF THE BONDS OR THE MARKET VALUE OF THE BONDS. LEGISLATIVE CHANGES HAVE BEEN PROPOSED IN CONGRESS, WHICH, IF ENACTED, WOULD RESULT IN ADDITIONAL FEDERAL INCOME TAX BEING IMPOSED ON CERTAIN OWNERS OF TAX-EXEMPT STATE OR LOCAL OBLIGATIONS, SUCH AS THE BONDS. THE INTRODUCTION OR ENACTMENT OF ANY OF SUCH CHANGES COULD ADVERSELY AFFECT THE MARKET VALUE OR LIQUIDITY OF THE BONDS. NO**

ASSURANCE CAN BE GIVEN THAT, SUBSEQUENT TO THE ISSUANCE OF THE BONDS, SUCH CHANGES (OR OTHER CHANGES) WILL NOT BE INTRODUCED OR ENACTED OR INTERPRETATIONS WILL NOT OCCUR. BEFORE PURCHASING ANY OF THE BONDS, ALL POTENTIAL PURCHASERS SHOULD CONSULT THEIR TAX ADVISORS REGARDING POSSIBLE STATUTORY CHANGES OR JUDICIAL OR REGULATORY CHANGES OR INTERPRETATIONS, AND THEIR COLLATERAL TAX CONSEQUENCES RELATING TO THE BONDS.

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

### **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Bonds and with regard to the tax exempt status of the interest thereon (see "TAX MATTERS") are subject to the approving legal opinion of Stradling, Yocca, Carlson & Rauth, Newport Beach, California, Bond Counsel. A signed copy of that opinion, dated and speaking only as of the date of original delivery of the Bonds, will be delivered to the Underwriter at the time of such original delivery. A copy of such opinion will accompany the Bonds and a draft of that opinion is attached hereto as Appendix B.

In rendering its approving opinion, Bond Counsel will rely on certifications and representations of fact to be contained in the transcript of proceedings which Bond Counsel will not have independently verified. Certain legal matters will be passed upon for the Underwriter by its counsel, Eichner Norris & Neumann PLLC, Washington, D.C., and for the Borrower by Katten Muchin Rosenman LLP, Chicago, Illinois, and Hessel, Aluise and Neun, P.C., Washington, D.C.

### **RATING**

It is a condition precedent to the Underwriter's acceptance of the Bonds on the date of issuance that Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business (the "Rating Agency"), has assigned the rating to the Bonds as shown on the cover page of this Official Statement. There is no assurance that such rating will continue for any given period of time or that it will not be revised or withdrawn entirely by such rating agency, if in its judgment, circumstances so warrant. A revision or withdrawal of such rating may have an effect on the market price of the Bonds.

The rating is 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. The Issuer has not undertaken responsibility either to bring to the attention of the registered owner of the Bonds any proposed revision or withdrawal of the rating 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 effect on the market price of the Bonds if a registered owner attempts to sell the same.

The Issuer has not assumed any responsibility either to notify the owners of any proposed change in or withdrawal of such rating subsequent to the date of the Official Statement and the Borrower has such responsibility only in connection with the reporting of events as provided in the Continuing Disclosure Agreement (as defined below). Neither of them has any responsibility to contest any such revision or withdrawal.

## **CONTINUING DISCLOSURE**

The Issuer has determined that no financial or operating data concerning the Issuer is material to an evaluation of the offering of the Bonds or to any decision to purchase, hold or sell Bonds and the Issuer will not provide any such information. The Issuer shall have no liability to the Holders of the Bonds or any other person with respect to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “Rule”).

The Borrower will enter into a Continuing Disclosure Agreement dated as of June 1, 2014 (the “Continuing Disclosure Agreement”), with the Trustee, acting as the Dissemination Agent, obligating the Borrower to send, or cause to be sent, certain financial information with respect to the Project to certain information repositories annually and to provide notice, or cause notice to be provided, to the Municipal Securities Rulemaking Board, if any, of certain enumerated events for the benefit of the beneficial owners and Holders of any of the Bonds, in order to allow the Underwriter to meet the requirements of Section (b)(5)(i) of the Rule.

A failure by the Borrower to comply with the provisions of the Continuing Disclosure Agreement will not constitute a default under the Indenture or the Loan Agreement (although Holders of the Bonds will have any available remedy at law or in equity for obtaining necessary disclosures). Nevertheless, such a failure to comply is required to be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds.

Neither the Borrower, nor its members, nor any entity affiliated with the Borrower nor the members has defaulted in connection with its or their continuing disclosure undertakings or obligations in connection with any issuance of bonds subject to the Rule. See “APPENDIX F – FORM OF CONTINUING DISCLOSURE AGREEMENT” herein.

## **MISCELLANEOUS**

The foregoing references to and summaries or descriptions of provisions of the Bonds, the Loan Agreement, the Indenture and the Regulatory Agreement, and all references to other materials not stated to be quoted in full are only brief outlines of some of the provisions thereof and do not purport to summarize or describe all of the provisions thereof. After the Closing Date, copies of the Loan Agreement, the Indenture, the Note, the Regulatory Agreement may be obtained from the Trustee at its designated corporate trust office.

[Remainder of page intentionally left blank]

The Official Statement has been duly authorized, executed and delivered by the Borrower.

**KIKU GARDENS HOUSING PARTNERS, LP**

By: Hearthstone Housing Foundation,  
its managing general partner

By: \_\_\_\_\_  
Name: Velma de la Rosa  
Title: Authorized Signatory

## APPENDIX A

### DEFINITION OF CERTAIN TERMS

“Act” means Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code, as amended.

“Additional Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of the Loan Agreement.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agreement” means the Loan Agreement dated as of even date with the Indenture, between the Issuer and the Borrower and assigned by the Issuer, except for Unassigned Issuer’s Rights, to the Trustee, as amended or supplemented from time to time.

“Authorized Borrower Representative” means the person or persons designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by an officer of the manager of either of the general partners of the Borrower, which certificate may designate an alternate or alternates.

“Authorized Denomination” means (a) so long as the Bonds are rated “A,” without regard to a modifier (or the equivalent) or higher by a Rating Agency, \$5,000 or any integral multiple of \$5,000 in excess thereof, or (b) at any other time, \$100,000, or any integral multiple of \$0.01 in excess thereof, except that in each case one Bond of each series may be in a principal amount equal to the then Outstanding principal amount of the Bonds of such series.

“Authorized Official” means the Chairperson or the Executive Director of the Issuer, and any other officer 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. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Official is an Authorized Official until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

“Available Moneys” means, as of any date of determination, any of the following, as applicable:

- (a) the proceeds of the Bonds;
- (b) proceeds from advances on the Freddie Mac Loan deposited directly with the Trustee by the Freddie Mac Lender;
- (c) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received an opinion of counsel to the effect that the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) or be avoidable as

preferential payments under Section 547 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

- (d) the proceeds of any letter of credit; or
- (e) investment earnings derived from the investment of moneys described in (a), (b), (c), or (d).

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

“Board” means the Board of the Issuer.

“Bond Counsel” shall mean, collectively, Stradling, Yocca Carlson & Rauth, a Professional Corporation or any other attorney or firm of attorneys designated by the Issuer and approved by a Majority of the Holders of the Bonds and who has a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Bond Debt Service Charges” means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon acceleration.

“Bond Fund” means the Bond Fund created in the Indenture.

“Bond Payment Date” means each Interest Payment Date and any other date Bond Debt Service Charges on the Bonds are due, whether at maturity, upon acceleration or otherwise.

“Bond Resolution” means that certain Bond Resolution relating to the Project, adopted by the Board on May 20, 2014.

“Bond Year” means each annual period of twelve months the first of which commences on the date of the original issuance and delivery of the Bonds and the last of which ends on the maturity of the Bonds, except that the first and last Bond Year may be less than twelve months.

“Bonds” means the Multifamily Housing Revenue Bonds (Garden Villas) Series 2014A of the Issuer authorized in the Bond Resolution and the Indenture in an amount of \$\_\_\_\_\_\*.

“Book Entry Form” or “Book Entry System” means, with respect to the Bonds, a form or system, as applicable, under which (i) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (ii) the ownership of book entry interests in Bonds and Bond Debt Service Charges thereon may be transferred only through a book entry made by Persons other than the Issuer or the Trustee. The records maintained by Persons other than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book entry interests in the Bonds and Bond Debt Service Charges thereon.

“Borrower” means Kiku Gardens Housing Partners, LP, a California limited partnership, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

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\* Preliminary; subject to change.

“Borrower Documents” has the meaning given to such term in the Loan Agreement.

“Business Day” means a day of the week, other than a Saturday or a Sunday, on which commercial banks located in the city in which the principal corporate trust office of the Trustee are not required or authorized to remain closed.

“Closing Date” means June \_\_, 2014.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Collateral Fund” means the Collateral Fund created pursuant to the Indenture.

“Completion Date” means the date of substantial completion of the Project evidenced in accordance with the requirements of the Loan Agreement.

“Construction Period” means the period between the beginning of the acquisition, rehabilitation, remodeling, improving and equipping of the Project and the Completion Date.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of June 1, 2014, between the Borrower and U.S. Bank National Association, as Dissemination Agent.

“Contractual Obligation” means for any Person any obligation, covenant, or condition contained in any evidence of Indebtedness or any agreement or instrument under or pursuant to which any evidence of Indebtedness has been issued, or any other material agreement, instrument or guaranty, to which such Person is a party or by which such Person or any of its assets or properties are bound.

“Costs of Issuance Fund” means the Costs of Issuance Fund created pursuant to the Indenture.

“Depository” means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in the Bonds or Bond Debt Service Charges thereon, and to effect transfers of book entry interests in the Bonds.

“Disbursement Request” shall have the meaning set forth in the Indenture.

“Dissemination Agent” means U.S. Bank National Association, acting in its capacity as dissemination agent under the Continuing Disclosure Agreement, or any successor dissemination agent designated in accordance with the Continuing Disclosure Agreement.

“DTC” means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

“DTC Participant” means any participant contracting with DTC under its book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

“Eligible Investments” means (i) non-AMT tax exempt obligations rated in the highest short term category by S&P; or (ii) money market mutual funds (including funds of the Trustee or affiliates)



registered under the Investment Company Act of 1940, as amended, investing solely in investments described in (i) which are rated in the highest short term category by S&P, which in any case, shall mature or be subject to tender or redemption at par on or prior to the earlier of (A) 35 days from the date of investment or (B) the date such moneys are needed for the purposes thereof.

“Event of Default” means any of the events described as an Event of Default in the Indenture or the Loan Agreement.

“Extraordinary Services” and “Extraordinary Expenses” mean all services rendered and all reasonable expenses properly incurred by the Trustee under the Indenture, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include services rendered or expenses incurred by the Trustee in connection with, or in contemplation of, an Event of Default.

“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) the investment is a commingled investment fund in which the Issuer and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by applicable regulations under the Code, the term “investment” will include a “hedge.”

“Fees and Expenses” means the fees, advances, out-of-pocket expenses, costs and other charges payable by the Borrower from time to time (other than fees for Extraordinary Services and Extraordinary Expenses) pursuant to the Loan Agreement.

“Fiscal Year” means, with respect to a Person, that period beginning on January 1 of each year and ending on December 31 of that year or such other fiscal year as shall be designated by such Person as its annual accounting period.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in the Loan Agreement.

“Freddie Mac” means the Federal Home Loan Mortgage Corporation.

“Freddie Mac Borrower Note” means the \$\_\_\_\_\_ \* Multifamily Note dated \_\_\_\_\_, 2014 from Borrower to Freddie Mac Lender to evidence its indebtedness under the Freddie Mac Loan.

“Freddie Mac Guide” means the Freddie Mac Multifamily Seller/Service Guide, as the same may be amended from time to time.

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\* Preliminary; subject to change.

“Freddie Mac Lender” means Citibank, N.A., a national banking association, its successors and assigns, including Freddie Mac, if and when Freddie Mac acquires the Freddie Mac Loan.

“Freddie Mac Loan” means the mortgage loan in the original principal amount of \$ \_\_\_\_\_\* to be advanced by the Freddie Mac Lender to the Borrower.

“Freddie Mac Loan Commitment” means, collectively, the commitments for the Freddie Mac Loan with respect to the Project, from the Freddie Mac Lender and from Freddie Mac.

“Freddie Mac Loan Documents” means the documents related to the Freddie Mac Loan, including the Freddie Mac Loan Commitment, the Freddie Mac Borrower Note, the Freddie Mac Mortgage and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the Freddie Mac Borrower Note.

“Freddie Mac Loan Funds” means proceeds of the Freddie Mac Loan in the principal amount of \$ \_\_\_\_\_ plus the Initial Deposit, which proceeds have been assigned by the Borrower to the Trustee pursuant to the Loan Agreement.

“Freddie Mac Mortgage” means the first-lien priority Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of \_\_\_\_\_, 2014 from Borrower for the benefit of the Freddie Mac Lender to secure the repayment of the Freddie Mac Borrower Note.

“GAAP” means generally accepted accounting principles applied on a consistent basis.

“Government” shall mean the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and “Governmental” shall mean of, by, or pertaining to any Government.

“HUD” means the United States Department of Housing and Urban Development.

“Holder,” “Holders,” or “Holder of a Bond” means the Person in whose name a Bond is registered on the Register.

“Indebtedness” shall mean for any Person (a) all indebtedness or other obligations of such Person for borrowed money or for the deferred purchase price of property or services, (b) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services, the payment or collection of which such Person has guaranteed (except by reason of endorsement for deposit or collection in the ordinary course of business) or in respect of which such Person is liable, contingently or otherwise, including, without limitation, by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other Person, or otherwise to assure a creditor against loss, (c) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or in property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness or other obligations, (d) all direct or contingent obligations of such Person in respect of letters of credit, (e) all lease obligations which have been or should be, in accordance with GAAP, capitalized on the books of such Person as lessee, and (f) guaranties of any of the foregoing; provided that Indebtedness does not include accounts payable and accrued expenses incurred in the ordinary course of business.

“Indenture” means the Trust Indenture, dated as of June 1, 2014, between the Issuer and the Trustee, as amended or supplemented from time to time in accordance with the Indenture.

“Independent” when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, partner or employee who is a director, trustee, officer or employee of any partner of the Borrower or any Affiliate of the Borrower.

“Information Services” means in accordance with then-current guidelines of the Securities and Exchange Commission, the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor entity or entities designated by the Securities and Exchange Commission.

“Initial Deposit” means the deposit of Available Moneys in the amount of \$ \_\_\_\_\_ \* which the Borrower shall cause to be made from Available Moneys other than the proceeds of the Bonds to the Initial Deposit Account of the Bond Fund on the Closing Date.

“Initial Deposit Account” means the Initial Deposit Account within the Bond Fund created in the Indenture.

“Interest Payment Date” means each June 1 and December 1, commencing December 1, 2014.

“Interest Rate” means \_\_\_\_% per annum.

“Interest Rate for Advances” means the rate of twelve percent per annum (12%) or the rate per annum which is two percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate,” whichever is greater and lawfully chargeable, in whole or in part.

“Issuer” means the Chula Vista Housing Authority, a public body corporate and politic, organized and existing under the laws of the State of California.

“Investor Limited Partner” means CREA Garden Villas, LLC, a Delaware limited liability company, its permitted successors and assigns.

“Issuer Revenues” means (a) the Loan Payments, (b) all other moneys received or to be received by the Issuer or the Trustee in respect of repayment of the Loan, including without limitation, all moneys and investments in the Bond Fund, (c) any moneys and investments in the Project Fund and the Collateral Fund, and (d) all income and profit from the investment of the foregoing moneys. The term “Issuer Revenues” does not include any moneys or investments in the Rebate Fund and the Costs of Issuance Fund.

“Lien” means any mortgage, deed of trust, lien, charge, security interest or encumbrance of any kind upon, or pledge of, any property, whether now owned or hereafter acquired, and includes the acquisition of, or agreement to acquire, any property subject to any conditional sale agreement or other title retention agreement, including a lease on terms tantamount thereto or on terms otherwise substantially equivalent to a purchase.

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\* Preliminary; subject to change.

“Loan” means the loan by the Issuer to the Borrower with the proceeds received from the sale of the Bonds.

“Loan Payment Cure Period” means a period of four Business Days following any Loan Payment Date.

“Loan Payment Date” means the fifth Business Day preceding each Bond Payment Date.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and the Loan Agreement.

“Majority of the Holders of the Bonds” means the Holders of more than fifty percent (50%) of the principal amount of the then Outstanding Bonds.

“Maturity Date” means June 1, 2015.

“Minimum Trustee Rating” means a long term rating of the Trustee’s unsecured obligations with maturities in excess of one year of not less than “A” by S&P, or, if the Trustee does not have such a rating from S&P, it must have a minimum rating of its unsecured obligations with maturities of one year or less of “A-1” from S&P.

“Note” means the Promissory Note, dated as of the Closing Date, in the form attached to the Loan Agreement as Exhibit A, in the original principal amount of \$\_\_\_\_\_, evidencing the obligation of the Borrower to make Loan Payments.

“Notice Address” has the meanings set forth in the Indenture.

“Opinion of Bond Counsel” means an opinion of Bond Counsel.

“Ordinary Services” and “Ordinary Expenses” mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to the Indenture. Without limiting the generality of this definition, Ordinary Services and Ordinary Expenses shall include, without limitation, services provided by the Trustee in connection with any meetings of Holders of the Bonds as provided in the Indenture.

“Outstanding Bonds,” “Bonds outstanding” or “outstanding” as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under the Indenture, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;

(b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or the Paying Agents on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Indenture; and

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\* Preliminary; subject to change.

(d) Bonds in lieu of which others have been authenticated under the Indenture.

“Paying Agent” means the Trustee acting as such, or any other bank or trust company designated as a Paying Agent by or in accordance with the Indenture.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Indenture from time to time.

“Predecessor Bond” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under the Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in the Indenture, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“Project” means the acquisition, rehabilitation and equipping of an existing 99-unit plus one manager’s unit apartment complex known as “Garden Villas” (fka Kiku Gardens), and located at 1260 3rd Avenue in Chula Vista, California.

“Project Costs” means the costs of the Project specified in the Loan Agreement.

“Project Fund” means Project Fund created in the Indenture.

“Project Purposes” means the operation of the Project in accordance with the Act, the Code and the Regulatory Agreement.

“Rating Agency” means Standard & Poor’s Ratings Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) or any other nationally recognized municipal securities rating agency acceptable to the Holders.

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

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to the Indenture.

“Registrar” means the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of the Indenture; each Registrar shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

“Regular Record Date” means, the fifteenth day of the calendar month next preceding an Interest Payment Date applicable to that Bond.

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, by and among the Issuer, the Borrower and the Trustee, dated as of June 1, 2014.

“Securities Act” means the United States Securities Act of 1933, as in effect on the Closing Date.

“Securities Depositories” means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax (516) 227 4039 or 4191; or, in accordance with the then current guidelines of

the Securities and Exchange Commission to such other addresses and/or such other securities depositories or, as the Issuer may designate in a request of the Issuer delivered to the Trustee, to no such depositories.

“S&P” means Standard & Poor’s Ratings Services.

“Special Funds” means, collectively, the Bond Fund, the Collateral Fund and the Project Fund, and any accounts therein, all as created in the Indenture.

“Special Limited Partner” means Kiku Gardens Development, LLC, a California limited liability company.

“Special Record Date” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

“State” means the State of California.

“Supplemental Indenture” means any indenture supplemental to the Indenture entered into between the Issuer and the Trustee in accordance with the Indenture.

“Surplus Cash” means, with respect to any period, any revenues of the Borrower remaining after paying, or setting aside funds for paying, (i) all sums due or currently required to be paid under the Freddie Mac Loan Documents that are due or currently payable, and (ii) all reasonable operating expenses of the Project, including but not limited to real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (including any fees, deposits or escrows payable under the Borrower’s organizational documents, but excluding any developer fees payable with respect to the Project).

“Tax Certificate” means the Tax Certificate, dated the Closing Date executed by the Issuer.

“Trustee” means U.S. Bank National Association, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Additional Payments under the Loan Agreement, to be held harmless and indemnified under the Loan Agreement, to be an insured under the Loan Agreement, to be reimbursed for attorney’s fees and expenses under the Loan Agreement, to receive notices pursuant to the Loan Agreement and to give or withhold consent to amendments, changes, modifications, alterations and termination of the Loan Agreement under the Loan Agreement.

“Underwriter” shall mean Citigroup Global Markets Inc.

## APPENDIX B

### FORM OF BOND COUNSEL OPINION

*The form of the approving legal opinion of Stradling, Yocca, Carlson & Rauth, Bond Counsel, is set forth below. The actual opinion will be delivered on the date of delivery of the 2013 Series A Bonds referred to therein and may vary from the form set forth to reflect circumstances both factual and legal at the time of such delivery. Recirculation of the final Official Statement shall create no implication that Stradling, Yocca, Carlson & Rauth has reviewed any of the matters set forth in such opinion subsequent to the date of such opinion.*

[Closing Date]

Chula Vista Housing Authority  
Chula Vista, California

Re:     \$\_\_\_\_\_ Chula Vista Housing Authority Multifamily Housing Revenue Bonds  
          (Garden Villas), Series 2014A

Ladies and Gentlemen:

We have acted as Bond Counsel to the Chula Vista Housing Authority (the "Housing Authority") in connection with the issuance of its \$\_\_\_\_\_ Chula Vista Housing Authority Multifamily Housing Revenue Bonds (Garden Villas), Series 2014A (the "Bonds"). We have examined certified copies of the proceedings of the Housing Authority and other information and documents submitted to us relative to the issuance and sale of the Bonds.

The Bonds have been issued pursuant to a resolution of the Housing Authority adopted on \_\_\_\_\_, 2014 (the "Resolution"), the provisions of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code of the State of California (the "Act"), and a Trust Indenture dated as of June 1, 2014 (the "Indenture"), between the Housing Authority and U.S. Bank National Association, as trustee (the "Trustee"). Capitalized terms used herein and not defined shall have the meanings given to them in the Indenture.

The Bonds are dated as of the date of delivery and mature on the date and bear interest at the rates per annum set forth in the Indenture. The Bonds are issuable only as a single, fully registered Bond in the form set forth in the Indenture, redeemable in the amounts, at the times and in the manner provided for in the Indenture.

The Bonds are being issued for the purpose of financing the acquisition, rehabilitation and equipping of a multifamily rental housing project (the "Project") known as "Garden Villas" to be rehabilitated by Kiku Gardens Housing Partners, LP, a California limited partnership (the "Borrower") in the City of Chula Vista. The proceeds of the Bonds are being loaned to the Borrower to acquire, rehabilitate and equip the Project.

In rendering our opinion, we have examined the Act and originals or certified copies of the Resolution, the Indenture, the Loan Agreement dated as of June 1, 2014 (the "Loan Agreement"), between the Housing Authority and the Borrower, the Regulatory Agreement and Declaration of Restrictive Covenants dated as of June 1, 2014 (the "Regulatory Agreement"), by and among the Housing Authority, the Trustee and the Borrower, the Promissory Note executed by the Borrower in favor of the Housing Authority, and the Tax Certificate executed by the Housing Authority, and such other

information and documents as we have deemed necessary to render the opinions set forth herein. As to questions of fact material to the opinions stated herein, we have relied upon representations made by the Housing Authority in the Indenture, and by the Housing Authority and the Borrower in the Regulatory Agreement and the Tax Certificate, the certified proceedings of the Housing Authority and certifications of public officials of the Housing Authority, the Borrower, the initial purchaser of the Bonds and others furnished to us without undertaking to verify through independent investigation the accuracy of the representations and certifications relied upon by us. In rendering this opinion, we have assumed the genuineness of all signatures and documents presented to us.

Based upon our examination of all of the foregoing, and in reliance thereon, and on all matters of fact as we deem relevant under the circumstances, and upon consideration of applicable laws, we are of the opinion that:

(1) the Housing Authority is a public body, corporate and politic, duly and validly organized and existing under the Constitution and laws of the State of California, with full power and authority to adopt the Resolution, to execute and deliver the Indenture, the Loan Agreement and the Regulatory Agreement (collectively, the “Bond Documents”), to perform its obligations under the Bond Documents, and to issue, sell and deliver the Bonds;

(2) the execution and delivery of the Bond Documents have been duly authorized by the Housing Authority and, assuming proper authorization, execution and delivery by the respective other parties thereto, are valid and binding obligations of the Housing Authority enforceable against the Housing Authority in accordance with their terms;

(3) the Bonds have been duly and validly authorized, executed and delivered by the Housing Authority and are legal, valid and binding special and limited obligations of the Housing Authority, payable solely out of the revenues and receipts provided therefor in the Indenture and the Bonds are enforceable in accordance with their terms and the terms of the Indenture;

(4) the Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Issuer’s interest in the Trust Estate (as defined in the Indenture) held or set aside under the Indenture, subject to the application thereof to the purposes and on the terms and conditions permitted by the Indenture;

(5) assuming continuing compliance subsequent to the issuance of the Bonds with the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), under existing statutes, regulations, rulings and judicial decisions, interest on the Bonds is excluded from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a “substantial user” of the property financed with the proceeds of the Bonds or a “related person,” as such terms are used in Section 147(a) of the Code. Interest on the Bonds is an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations; and

(6) interest on the Bonds is exempt from State of California personal income tax.

The opinions expressed in paragraphs (2), (3) and (4) above are subject to the condition that the enforceability of the Bond Documents and the Bonds may be limited by moratorium, bankruptcy, reorganization, fraudulent conveyance, insolvency, by other laws affecting creditors’ rights generally, by the exercise of judicial discretion in accordance with general principles of equity and by limitations on legal remedies against public agencies in the State of California. In addition, we express no opinion as to



the enforceability of any indemnification, contribution, choice of law, choice of forum, penalty or waiver provisions contained in the Bond Documents or the Bonds.

The opinion expressed in paragraph (5) above as to the exclusion from gross income for federal income tax purposes of interest on the Bonds is subject to the condition that the applicable requirements of the Code are complied with subsequent to the issuance of the Bonds. Failure to comply with such requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. The Borrower has covenanted in the Loan Agreement and the Regulatory Agreement to comply with such requirements. Except as expressly set forth in paragraph (5) above, we express no opinion as to any federal tax consequences with respect to the Bonds.

Certain requirements and procedures contained or referred to in the Bond Documents and the Tax Certificate may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of tax-exempt obligations. We express no opinion as to the effect on the exclusion of interest on the Bonds from gross income for federal income tax purposes on and after the date on which any such change occurs or action is taken upon the advice or approval of counsel other than Stradling Yocca Carlson & Rauth, a Professional Corporation.

Our opinion is limited to matters governed by the laws of the State of California and federal law. We assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction and express no opinion as to the enforceability of the choice of law provisions contained in the Bond Documents.

The opinions expressed herein are based on an analysis of existing statutes, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur.

We express no opinion herein as to the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds, and we expressly disclaim any duty to advise the owners of the Bonds with respect to matters contained in the Official Statement.

Our engagement with respect to the Bonds terminates upon their issuance, and we disclaim any obligation to update the matters set forth herein.

Respectfully submitted,

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following, in addition to the information provided under "THE BONDS", summarizes certain provisions of the Indenture, to which reference is made for the detailed provisions thereof.*

#### **Creation of Trust**

To secure the payment of Bond Debt Service Charges on the Bonds, the Issuer will assign to the Trustee its right, title and interest in (i) the Issuer Revenues, including, without limitation, all Loan Payments and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan, (ii) the Special Funds, including all accounts in those funds and all moneys deposited therein and the investment earnings on such moneys, (iii) all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which moneys in the Special Funds are invested, and (except for moneys in the Rebate Fund and otherwise required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security under the Indenture by the Issuer or by anyone in its behalf, or with its written consent, to the Trustee, which is authorized by the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture, and (iv) the Loan Agreement, except for the Unassigned Issuer's Rights.

#### **Creation of Funds; Allocation of Bond Proceeds**

(a) The following funds and accounts as created in the Indenture. Each fund and account is to be maintained in the custody of the Trustee as a separate fund or account. The funds and accounts are:

- (1) the Bond Fund designated "Bond Fund," and the "Initial Deposit Account" therein;
- (2) the Project Fund designated "Project Fund";
- (3) the Collateral Fund designated "Collateral Fund";
- (4) the Costs of Issuance Fund designated "Costs of Issuance Fund"; and
- (5) the Rebate Fund designated "Rebate Fund."

(b) The proceeds of the sale of the Bonds (including without limitation, premium, if any, and interest accrued thereon), shall be deposited by the Trustee on the Closing Date to the Project Fund.

On the Closing Date, the Trustee shall deposit \$\_\_\_\_\_ received by or on behalf of the Borrower, from money other than the proceeds of the Bonds, in the Costs of Issuance Fund. In addition, the Trustee shall cause the Initial Deposit to be deposited by the provider thereof to the Initial Deposit Account of the Bond Fund.

#### **Allocation of Bond Proceeds**

All moneys received upon the sale of the Bonds, other than accrued interest to be deposited in the Bond Fund, will be deposited in the Project Fund created by the Indenture and used in accordance with

the Indenture to pay or provide for the payment of a portion of the costs of acquiring, rehabilitating, equipping and otherwise improving the Project.

### **Application of Loan Payments**

So long as there are any Outstanding Bonds, any payments made by the Borrower pursuant to the Notes and the Loan Agreement (other than payments made pursuant to Unassigned Issuer's Rights) shall be paid on each Loan Payment Date directly to the Trustee, and deposited into the Bond Fund to be used to pay the interest and principal (if any) on the Bonds on the next succeeding Interest Payment Date; provided that so long as there are amounts available therefor, for purposes of paying interest on the Loan when due the Trustee shall debit the Initial Deposit Account in the amounts and with respect to the Interest Payment Dates as specified in the Indenture and transfer the same to the Bond Fund to pay interest due on the Bonds on each Interest Payment Date; and provided further that so long as there are amounts available therefor, for purposes of making principal payments on the Loan when due the Trustee shall debit the Collateral Fund and transfer the same to the Bond Fund to pay the principal of the Bonds on the date set for payment of the Bonds on the Maturity Date.

### **Disbursements from the Project Fund**

(a) Requisitions. Subject to the provisions of the Indenture described below, the Trustee shall make disbursements from the Project Fund to pay Project Costs only upon the receipt of a written request of the Borrower signed by an Authorized Borrower Representative (which request shall be in the form attached to the Loan Agreement) a "Disbursement Request."

(b) Project Fund. When the Trustee receives a Disbursement Request from the Project Fund in accordance with the provisions described in the preceding paragraph and the Loan Agreement, subject to the following paragraph, the Trustee shall confirm that Available Moneys equal to or greater than the sum of (i) the amount set forth in the Disbursement Request and (ii) all prior disbursements made by the Trustee from the Project Fund, are on deposit in the Collateral Fund. Upon confirmation of the items above, the Trustee shall thereafter disburse the funds from the Project Fund to pay Project Costs in the amount pursuant to the Disbursement Request directly to (1) the Freddie Mac Lender, to the extent the corresponding deposit of Available Moneys to the Collateral Fund was made by or at the direction of the Freddie Mac Lender (as confirmed in the Disbursement Request) or (2) the Borrower (or any other party designated in the Disbursement Request) to the extent the corresponding deposit of Available Moneys to the Collateral Fund was made by or at the direction of the Borrower or such other party. Any interest earnings on the Project Fund shall be credited to the Bond Fund. The Trustee is hereby authorized and directed to transfer, without the need to receive a signed Disbursement Request, funds from the Project Fund to the Bond Fund, as referenced under the heading "Bond Fund" below, for the purpose of covering any shortfall or delinquency in the Bond Fund as to payments of Bond Service Charges.

There shall be deposited from time to time in the Collateral Fund Available Moneys in such amounts and at such times as may be necessary to allow the Trustee to disburse funds from the Project Fund, pursuant to the Indenture, upon the Trustee's receipt of a Disbursement Request from the Borrower to pay Project Costs.

(c) Records. The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom as provided in the Indenture. If requested by the Issuer or the Borrower, or the Investor Limited Partner, after the filing by the Borrower of the Completion Certificate with the Trustee as provided in the Indenture, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer upon written request and the Borrower and the Investor Limited Partner.

The proceeds of the Bonds shall be used or deemed used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations), and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to the building in the Project and the land on which it is located so that the building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under the Indenture.

Upon the occurrence and continuance of an Event of Default under the Indenture because of which the principal amount of the Bonds has been declared to be due and immediately payable described below, any moneys remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

### **Bond Fund**

There shall be deposited in the Bond Fund (1) the amounts described above, (2) interest earnings on the Project Fund and the Collateral Fund and (3) amounts described below.

The Bond Fund (and the Initial Deposit Account therein) and the moneys and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Debt Service Charges as they become due and at stated maturity, or upon acceleration, all as provided in the Indenture and in the Loan Agreement.

The Trustee shall transmit to the Paying Agent, as appropriate, from moneys on deposit in the Bond Fund, amounts sufficient to make timely payments of Bond Debt Service Charges on the Bonds. To the extent that the amount needed by the Paying Agent is not sufficiently predictable, the Trustee may make any credit arrangements with the Paying Agent which will permit those payments to be made. The Issuer authorizes and directs the Trustee to cause withdrawal of moneys from the Bond Fund which are available for the purpose of paying, and are sufficient to pay, Bond Debt Service Charges on the Bonds as they become due and payable, for the purposes of paying or transferring moneys to the Paying Agent which are necessary to pay such Bond Debt Service Charges. Amounts credited to or on deposit in the Initial Deposit Account shall be transferred to the Bond Fund on each Loan Payment Date in order to provide for the payment of Bond Debt Service Charges on the next succeeding Bond Payment Date.

In the event that amounts on deposit in the Bond Fund on any Loan Payment Date are insufficient to make the payment of Bond Debt Service Charges due on the next succeeding Bond Payment Date, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to pay the Bond Debt Service Charges due on the next succeeding Bond Payment Date:

- (1) first, from amounts on deposit in the Initial Deposit Account of the Bond Fund;
- (2) second, from amounts on deposit in the Collateral Fund; and

- (3) third, from amounts on deposit in the Project Fund.

### **Investment of Special Funds and the Rebate Fund**

(a) Any money held as part of the funds and accounts created under the Indenture shall be invested or reinvested by the Trustee solely in Eligible Investments pursuant to written direction from the Borrower consistent with the terms of the Indenture. All such Eligible Investments shall mature or be subject to withdrawal or redemption without discount or penalty prior to the next Interest Payment Date. In addition, following receipt of written notice of an Event of Default of the Borrower, the Trustee shall invest and reinvest the money it holds as part of the funds and accounts in Eligible Investments consistent with the terms of this Indenture. Except as described below, any investment made with money on deposit in a fund or account shall be held by or under control of the Trustee and shall be deemed at all times a part of the fund or account where such money was on deposit, and the interest and profits realized from such investment shall be credited to such fund or account and any loss resulting from such investment shall be charged to such fund or account. In the absence of the receipt of any investment instructions as provided herein, the Trustee is authorized to invest all money under its control in money market mutual funds described in clause (ii) of the definition of Eligible Investments. Further, in the absence of written directions from the Borrower and except for funds required to be invested at a restricted yield pursuant to Section 148 of the Code, the Trustee is expressly authorized to implement its automated cash investment system, to assure that cash on hand is invested, and to charge its normal cash investment fees, which may be deducted from income earned on investments; provided that such fees are separately stated and accounted for.

(b) The Trustee may make any investment through its own bond department, investment department or other commercial banking department or Affiliate of the Trustee providing investment services. The Trustee, any such department or the Trustee's Affiliates may receive reasonable and customary compensation in connection with any investment made under this Indenture.

(c) The Trustee shall have no liability or responsibility for any depreciation of the value of any investment made in accordance with the provisions of this section or for any loss resulting from such investment or redemption, sale or maturity thereof.

(d) Unless otherwise confirmed in writing, an account statement delivered by the Trustee to the Borrower shall be deemed written confirmation by said party that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by said party, unless said party notifies the Trustee in writing to the contrary within 30 days of the date of receipt of such statement.

(e) The Issuer (and the Borrower by its execution of the Loan Agreement) acknowledges that to the extent regulations of the Office 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 specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish to the Issuer, the Borrower and the Investor Limited Partner periodic cash transaction statements that include detail for all investment transactions made by the Trustee hereunder.

(f) Except as otherwise provided in subsection (g) of this section, the Issuer and the Borrower covenant that 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 Section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by the Indenture or the Code) at Fair Market Value.

(g) The Issuer (and the Borrower by its execution of the Loan Agreement) covenants that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in any reserve fund shall be valued at their present value (within the meaning of Section 148 of the Code).

### **Repayment to the Borrower from the Bond Fund**

Except as described under the caption “Rebate Fund” below, any amounts remaining in the Bond Fund (i) after all of the outstanding Bonds shall be deemed paid and discharged under the provisions of the Indenture, and (ii) after payment of all fees, charges and expenses of the Trustee, the Registrar, the Paying Agents and the Issuer, and of all other amounts required to be paid under the Indenture, the Loan Agreement, the Regulatory Agreement and the Note, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the outstanding Bonds.

### **Rebate Fund**

Any provision of the Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien under the Indenture.

The Trustee shall furnish to the Borrower all information reasonably requested by the Borrower with respect to the Bonds and investments of the funds and accounts maintained by the Trustee under the Indenture. The Trustee shall make deposits to and disbursements from the Rebate Fund (including rebate payments to the United States required to be made by the Tax Certificate), as well as investments of the amounts therein, in accordance with the written directions received from the Borrower pursuant to the Tax Certificate. Anything in the Indenture to the contrary notwithstanding, the provisions of the Tax Certificate may be superseded or amended by an amendment or supplement to the Tax Certificate effected in accordance with the terms thereof.

### **Collateral Fund**

There shall be deposited from time to time in the Collateral Fund, Available Moneys in such amounts and at such times as may be necessary to allow the Trustee to disburse funds from the Project Fund, pursuant to the provisions described under the captions “Disbursements from the Project Fund” above and “APPENDIX D - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT— Disbursements from the Project Fund,” upon the Trustee’s receipt of a disbursement request from the Borrower. Moneys in the Collateral Fund shall be invested in Eligible Investments.

The Collateral Fund shall only be used and applied for, and irrevocably committed to, the payment of (i) the Bond Debt Service Charges on the Bonds which are due and payable on any Interest Payment Date or Maturity Date and (ii) the Bond Debt Service Charges on the Bonds as and when due at any other Bond Payment Date. Any interest earnings on the Collateral Fund shall be credited to the Bond Fund.

### **Costs of Issuance Fund**

The Trustee shall use money on deposit to the credit of the Costs of Issuance Fund, if any, to pay the costs of issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Borrower, as set forth in a certificate of the Borrower delivered to the Trustee on the Closing Date or as otherwise directed by the Borrower, upon delivery to the Trustee of appropriate invoices for such expenses. Investment earnings on amounts on deposit in the Costs of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Costs of

Issuance Fund sixty (60) days after the Closing Date shall be returned to the Borrower. Upon such final disbursement, the Trustee shall close the Costs of Issuance Fund.

### **Defaults; Events of Default**

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default under the Indenture:

(a) Payment of any interest on any Bond is not made when and as that interest becomes due and payable;

(b) Payment of the principal of any Bond is not made when and as that principal becomes due and payable, whether at stated maturity, upon acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in the Indenture or in the Bonds, which failure will have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and will be given by the Trustee at the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then outstanding; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure will not constitute an Event of Default so long as the Issuer or the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within one hundred eighty (180) days after the aforementioned notice; and

(d) The occurrence and continuance of an Event of Default as defined in the Loan Agreement.

The term “default” or “failure” as used in the Indenture means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in the Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute an Event of Default, as provided above or in the Loan Agreement.

Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Trustee shall pursue no remedies against the Borrower or the Project Fund if no Loan Agreement Default has occurred and is continuing. An Event of Default under the Indenture shall not in and of itself constitute a Loan Agreement Default.

### **Notice of Default**

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Borrower, the Investor Limited Partner, the Registrar or the Paying Agent and Authenticating Agent, within five days after the Trustee has notice of the Event of Default pursuant to the Indenture. If an Event of Default occurs of which the Trustee has notice pursuant to the Indenture, the Trustee shall give written notice thereof, within thirty days after the Trustee’s receipt of notice of its occurrence, to the Holders of all Bonds then outstanding as shown by the Register at the close of business fifteen days prior to the mailing of that notice.

The Investor Limited Partner shall be entitled to cure any Event of Default under the Indenture within the time frame provided to the Borrower thereunder. Issuer and Trustee agree that cure of any

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

### **Acceleration**

Upon the occurrence of an Event of Default described in in subsection (a) or (b) under the heading “Defaults; Events of Default” above, the Trustee may declare, and upon the written request of the Holders of not less than 25% in aggregate principal amount of Bonds then outstanding the Trustee will declare, by a notice in writing delivered to the Issuer and the Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in subsections (a) and (b) under the heading “Defaults; Events of Default” above, the Trustee, with the written consent of all Holders of Bonds then outstanding, may declare by a notice in writing delivered to the Issuer and Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon such declaration, the principal and interest on the Bonds will become and be due and payable immediately. Interest on the Bonds will accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided, that interest on any unpaid principal of Bonds outstanding will continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement under the Indenture (after an opportunity for hearing by the Issuer and the Borrower),

(a) all sums payable under the Indenture (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee or Paying Agents, and

(b) all existing Events of Default will have been cured,

then and in every case, the Trustee will waive the Event of Default and its consequences and will rescind and annul that declaration. No waiver or rescission and annulment will extend to or affect any subsequent Event of Default or will impair any rights consequent thereon.

### **Other Remedies; Rights of Holders**

With or without taking action as described under the caption “Acceleration” above, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or equity to enforce the payment of Bond Debt Service Charges or the observance and performance of any other covenant, agreement or obligation under the Indenture, the Loan Agreement, the Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of at least 25% in aggregate principal amount of Bonds outstanding, the Trustee (subject to the Trustee’s rights, duties and obligations as set forth in the Indenture) shall exercise any rights and powers conferred by the Indenture.



No remedy conferred upon or reserved to the Trustee (or to the Holders) by the Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given thereunder or otherwise to the Trustee or to the Holders now or hereafter existing.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default under the Indenture, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Issuer's Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement. In exercising any remedy, right or power thereunder or under the Indenture, the Trustee shall take such action as may be directed by the requisite percentage of the Holders of the Bonds then outstanding, applying the standards described in the Indenture.

### **Right of Holders to Direct Proceedings**

Anything to the contrary in the Indenture notwithstanding, the Holders of at least a majority in aggregate principal amount of Bonds then outstanding shall have the right at any time to direct, by an instrument or instruments in writing executed and delivered to the Trustee, 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 thereunder; provided, that (i) any direction shall not be otherwise than in accordance with the provisions of law and the Indenture, and (ii) the Trustee will be indemnified as provided in the Indenture.

### **Rights and Remedies of Holders**

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of the Indenture or for the execution of any trust under the Indenture or any remedy under the Indenture, unless (a) there has occurred and is continuing an Event of Default of which the Trustee has been notified or is deemed to have notice pursuant to the Indenture, (b) the Holders of at least 25% in aggregate principal amount of Bonds then outstanding will have made written request to the Trustee and will have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers provided in the Indenture or to institute the suit, action or proceeding in its own name, and will have offered indemnity to the Trustee as provided for in the Indenture, and (c) the Trustee thereafter has failed or refused to exercise the remedies, rights and powers under the Indenture or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds will have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of the Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power under the Indenture. Any suit, action or proceedings will be instituted, had and maintained in the manner provided herein for the benefit of the

Holders of all Bonds then outstanding. Nothing in the Indenture will affect or impair, however, the right of any Holder to enforce the payment of the Bond Debt Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

### **Waivers of Events of Default**

The Trustee shall waive any Event of Default under the Indenture upon the conditions stated therein and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds upon the written request of the Holders of (a) at least a majority in aggregate principal amount of all Bonds then outstanding in respect of which an Event of Default in the payment of Bond Debt Service Charges exists, or (b) at least 25% in aggregate principal amount of all Bonds then outstanding, in the case of any other Event of Default. There will not be so waived, however, any Event of Default described in subsection (a) or (b) under the heading “Defaults; Events of Default” above or any declaration of acceleration in connection therewith rescinded or annulled, unless at the time of that waiver or rescission and annulment payments of the amounts provided in the Indenture for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission or annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default will have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders will be restored to their former positions and rights under the Indenture, respectively. No such waiver or rescission will extend to any subsequent or other Event of Default, or impair any right consequent thereon.

### **Supplemental Indentures**

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to the Indenture for any one or more of the following purposes: (a) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture; (b) to grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee; (c) to assign additional revenues under the Indenture; (d) to accept additional security and instruments and documents of further assurance with respect to the Project; (e) to add to the covenants, agreements and obligations of the Issuer under the Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in the Indenture; (f) to evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under the Indenture, the Loan Agreement and the Bonds; (g) to permit the Trustee to comply with any obligations imposed upon it by law; (h) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Registrar and any Authenticating Agents or Paying Agents; (i) to achieve compliance of the Indenture with any applicable federal securities or tax law; (j) to make amendments to the provisions of the Indenture relating to arbitrage matters under Section 148 of the Code, if, in the Opinion of Bond Counsel, those amendments would not cause the interest on the Bonds outstanding to be included in gross income of the Holders for federal income tax purposes which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event will such amendment delegate to the Trustee without its consent, in its sole discretion the obligation to make or perform the calculations required by Section 148 of the Code; and (k) to permit any other amendment which is not materially adverse to the Trustee, in the judgment of the Trustee, or the Holders.

The provisions of subsections (h) and (j) above shall not be deemed to constitute a waiver by the Trustee, the Registrar, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to the Indenture or the Bonds.

## **Discharge of Lien**

The lien of the Indenture will be discharged if (i) the Issuer shall pay or cause to be paid and discharged all the Outstanding Bonds, or there shall otherwise be paid to the Holders of the Outstanding Bonds all the Bond Debt Service Charges due or to become due thereon, and (ii) provision also shall be made for the payment of all other sums payable under the Indenture or the Loan Agreement, the Regulatory Agreement and the Note.

All or any part of the Outstanding Bonds will be deemed to have been paid and discharged within the meaning of the Indenture if (a) the Trustee as paying agent and the Paying Agents shall have received, in trust and irrevocably committed for such payment, sufficient moneys, or (b) the Trustee shall have received, in trust and irrevocably committed for such payment, noncallable direct obligations of or obligations guaranteed as to full and timely payment by the United States of America certified by an independent public accounting firm or such other firm experienced with such certifications of national reputation to be of such maturities and interest payment dates, and to bear such interest, as will be sufficient together with moneys referred to in (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so irrevocably committed, except as provided in the Indenture), for the payment of all Bond Debt Service Charges on those Bonds at their maturity.

Any moneys so held by the Trustee may be invested by the Trustee only in noncallable direct obligations of or obligations guaranteed as to full and timely payment by the United States of America having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not be later than the date or dates at which moneys will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under the provisions of the Indenture described herein is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes set forth above, that income, interest or increment shall be transferred at the time of that determination in the manner provided in the Indenture for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to the provisions described above, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged and shall set forth a description of the obligations held pursuant to the provisions described above.

## **Amendments to Loan Agreement, Regulatory Agreement and Note**

Without the consent of or notice to the Holders, the Issuer, the Borrower and the Trustee may consent to any amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note as may be required (i) by the provisions of the Loan Agreement, the Regulatory Agreement or the Indenture, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement, the Regulatory Agreement or any of the Note, (iii) in connection with an amendment or to effect any purpose for which there could be an amendment of the Indenture without the consent of the Holders as provided in the Indenture, or (iv) in connection with any other change therein which is not to the prejudice of the Trustee or the Holders of the Bonds, in the judgment of the Trustee, applying the standards set forth in the Indenture.

Except for such amendments, changes or modifications described above, neither the Issuer nor the Trustee shall consent to (a) any amendment, change or modification of the Loan Agreement or the

Note which would change the amount or time as of which Loan Payments are required to be paid, without the giving of notice as provided in the Indenture of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or (b) any other amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note without the giving of notice as provided in the Indenture of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in the Indenture with respect to Supplemental Indentures.

If the Issuer or the Authorized Borrower Representative shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement, the Regulatory Agreement or the Note contemplated in clauses (a) or (b) above, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by the Indenture with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the designated corporate trust office of the Trustee for inspection by all Holders.

#### **Extent of Issuer's Covenants; No Personal Liability**

All covenants, stipulations, obligations and agreements of the Issuer contained in the Indenture will be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized by the Act and permitted by the Constitution of the State. No covenant, stipulation, obligation or agreement of the Issuer contained in the Indenture will be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the Board in other than that person's official capacity. Neither the members of the Board nor any official executing the Bonds, the Indenture, the Loan Agreement or any amendment or supplement thereto will be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution thereof.

#### **Subordination to Freddie Mac Loan Documents**

Notwithstanding anything in the Indenture to the contrary, Borrower, Trustee and Issuer acknowledge that the Indenture, and any obligations of Borrower thereunder, are subject and subordinate to the Freddie Mac Loan Documents. Notwithstanding any provision in the Indenture to the contrary, no obligations of the Borrower or thereunder shall be payable except from (A) Surplus Cash or (B) funds that are not derived from (i) revenues of the Project, or (ii) any reserve or deposit made with the Freddie Mac Lender or any other party as required by Freddie Mac in connection with the Freddie Mac Loan Documents or (C) any proceeds of the Freddie Mac Loan which have been deposited into the Collateral Fund or the Initial Deposit Account of the Bond Fund by or at the direction of the Freddie Mac Lender. No claims or actions shall be made (or payable) under the Indenture against the Project or the assets of the Borrower, except for Surplus Cash of the Borrower. Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Freddie Mac Loan Documents. In addition, the rights and obligations of the parties under the Indenture and all other documents evidencing, implementing, or securing the Indenture (the "Other Bond Documents") are and shall be subordinated in all respects rights and obligations of the parties to and under the Freddie Mac Loan Documents. In the event of any conflict between the provisions of (i) the Indenture or the Other Bond Documents and (ii) the provisions of the

Freddie Mac Loan Documents, the provisions of the Freddie Mac Loan Documents shall control. The provisions of this section shall control over any inconsistent provisions in the Indenture or the Other Bond Documents. Any subsequent amendment to the Indenture affecting the provisions of this section or the rights of the Freddie Mac Lender with respect to the Borrower or Project is subject to prior written approval of the Freddie Mac Lender and Freddie Mac (so long as the Project is subject to a mortgage held or under a commitment to purchase by Freddie Mac). The provisions of this section shall survive the termination of the Indenture.

## APPENDIX D

### SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

*The following summarizes certain provisions of the Loan Agreement, to which reference is made for the detailed provisions thereof.*

#### **The Loan and Loan Payments; Issuance of the Bonds**

Under the Loan Agreement, the Issuer agrees to issue the Bonds and to loan the proceeds thereof to the Borrower to assist in the financing of the Project. The Borrower agrees to repay the loan by making Loan Payments at the times required by the Loan Agreement and the Note delivered to the Trustee in connection with the Bonds. The Loan Payments will generally equal in the aggregate the amount of Bond Debt Service Charges on the Bonds. Furthermore, funds on deposit in the Project Fund and the Collateral Fund are available to pay Bond Debt Service Charges on the Bonds to the extent funds available in the Bond Fund on any Loan Payment Date are insufficient to make such payments.

The Borrower will be entitled to a credit against the Loan Payments required to be made with respect to the Bonds, on any date, equal to the amounts, if any, transferred by the Trustee from the Initial Deposit Account, the Project Fund or the Collateral Fund on such date for the payment of Bond Debt Service Charges. It is expected that Bond Debt Service Charges will be paid from funds transferred to the Trustee from the Project Fund.

#### **Disbursements from the Project Fund**

Subject to the provisions described below and so long as no Event of Default under the Loan Agreement has occurred and is continuing for which the Loan Payments and principal amount of the Bonds has been declared to be immediately due and payable pursuant to the Loan Agreement and the Indenture, respectively, disbursements from the Project Fund shall be made only to pay Project Costs.

Any disbursements from the Project Fund shall be made by the Trustee only as permitted pursuant to the Indenture and upon the written request of the Borrower executed by an Authorized Borrower Representative substantially in the form attached as an exhibit to the Loan Agreement, which requests shall be consecutively numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. No disbursement shall be made by the Trustee upon the basis of any such disbursement request except upon satisfaction of the following conditions and pursuant to the following procedures:

(i) An executed Certificate of the Freddie Mac Lender substantially in the form attached to the Loan Agreement, or an executed Certificate of the Borrower substantially in the form attached to the Loan Agreement, in each case related to the deposit of Available Moneys in to the Collateral Fund for the applicable disbursement request.

(ii) An executed Certificate of the Borrower substantially in the form attached to the Loan Agreement accompanied by a disbursement schedule listing the items for which the disbursement is sought and the total cost of each such item, together with invoices or other appropriate documentation (which may be a copy of an escrow agreement if a disbursement is to be made to an escrow account) for each such item.

(iii) All Loan Payments that are then due shall have been paid.

Any moneys in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the direction of the Authorized Borrower Representative, promptly shall be paid into the Bond Fund for payment of Bond Debt Service Charges.

### **Freddie Mac Loan Funds**

(a) The Borrower acknowledges that the Freddie Mac Lender has determined to fund the Freddie Mac Loan, on the condition that the Freddie Mac Lender originate and service the Freddie Mac Loan in accordance with the Freddie Mac Loan Documents and the Freddie Mac Guide.

(b) The Borrower assigns all right, title and interest of the Borrower in and to the proceeds of the Freddie Mac Loan (in the amount set forth in subsection (d) below) to the Trustee.

(c) The Freddie Mac Lender has agreed to deliver or cause to be delivered to the Trustee the Freddie Mac Loan Funds upon its receipt and approval of a requisition from the Borrower requesting an advance under the Freddie Mac Loan for payments of Project Costs.

(d) The amount of the Freddie Mac Loan Funds hereby assigned by the Borrower to the Trustee is hereby expressly limited to \$\_\_\_\_\_ plus the Initial Deposit and the Borrower shall have no further interest therein.

(e) The Borrower agrees to pay to the Freddie Mac Lender all amounts when due under the Freddie Mac Borrower Note and to abide by the provisions of the Freddie Mac Loan Documents.

(f) The Trustee agrees upon receipt from the Freddie Mac Lender of (i) the Freddie Mac Loan Funds, and (ii) an approved requisition, from time to time, to disburse amounts from the Project Fund, in the exact same amount of the Freddie Mac Loan Funds received by the Trustee from the Freddie Mac Lender, to or for the benefit of the Borrower for application to the payment of the Project Costs set forth in the approved requisition.

(g) The Borrower acknowledges that Freddie Mac Loan Funds assigned to the Trustee by the Borrower pursuant to this section shall be wired from the Freddie Mac Lender directly to the Trustee and disbursed and invested and applied by the Trustee in accordance with the provisions of the Indenture.

### **Borrower Required to Pay Costs in Event Project Fund Insufficient**

If moneys in the Project Fund are not sufficient to pay all Project Costs, the Borrower, nonetheless, agrees that the Borrower will complete the Project in substantial accordance with the Plans and Specifications and shall pay all such additional Project Costs from its own funds (or from other public or private financing sources available to the Borrower). The Borrower is required to pay all costs of issuing the Bonds in excess of the amount permitted, if any, to be paid from the Bond proceeds pursuant to the Tax Certificate. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs or payment of issuance costs from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of the Loan Payments.

### **Completion Date**

The Borrower shall notify the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form attached to the Loan Agreement. The Completion Certificate shall be delivered as promptly as practicable after the

occurrence of the events and conditions referred to in paragraphs (a) through (d) of the Completion Certificate.

### **Loan Repayment; Delivery of Note**

Upon the terms and conditions of the Loan Agreement, the Issuer will make the Loan to the Borrower. In consideration of and in repayment of the Loan, the Borrower is required to deliver or cause to be delivered to the Trustee on or before each Loan Payment Date, Loan Payments, equal to the amount necessary to pay Bond Debt Service Charges due on the next Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and the Loan Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made under the Loan Agreement, on any date, equal to the amounts, if any, transferred by the Trustee from the Initial Deposit Account, the Project Fund or the Collateral Fund on such date for the payment of Bond Debt Service Charges.

To secure the Borrower's performance of its obligations under the Loan Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note and the Regulatory Agreement.

Upon payment in full of the Bond Debt Service Charges on any or all of the Bonds, in accordance with the Indenture, whether at maturity, upon acceleration or otherwise, or upon provision for the payment of all other obligations in the Loan Agreement and therein having been made in accordance with the provisions of the Indenture, (i) if with respect to less than all of the Bonds then outstanding, an appropriate notation shall be endorsed on the Note, evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and (ii) if with respect to all of the Bonds then outstanding, the Note shall be deemed fully paid, the obligations of the Borrower shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower for cancellation. Unless the Borrower is entitled to a credit under express terms of the Loan Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Collateral Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

### **Additional Payments**

The Borrower shall pay to the Issuer or the Trustee, as the case may be, as Additional Payments under the Loan Agreement the following:

- (a) To the Issuer, on the Closing Date, and on each anniversary thereof while the Bonds are outstanding, an administrative fee equal to one eighth of one percent of the original principal amount of the Bonds on such date;
- (b) To the Issuer or the Trustee, as the case may be, whether or not an Event of Default has occurred under the Loan Agreement, as payment for or reimbursement or prepayment of any and all costs, expenses, and liabilities (i) incurred or paid by the Issuer or the Trustee, as the case may be, in satisfaction of any obligations of the Borrower hereunder not performed by the Borrower in accordance with the provisions hereof, or (ii) incurred as a result of a written request by the Borrower or of a requirement of



any Borrower Document or the Indenture and not otherwise required to be paid by the Borrower under the Loan Agreement, or (iii) incurred in the defense of any action or proceeding with respect to the Project or any Borrower Document, or in enforcing any Borrower Document, or arising out of or based upon any other document related to the issuance of the Bonds; and

(c) All reasonable fees, charges and expenses of the Trustee as trustee, registrar, authenticating agent and paying agent, and of any other paying agent, authenticating agent, and registrar on the Bonds under the Indenture, all as provided in the Indenture for services rendered under the Indenture, subject to the limitations set forth in the Indenture, as and when the same become due and payable.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this section by any such party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this section are not paid by the Borrower within ten (10) days of the Borrower's receipt of such demand, such Additional Payments shall bear interest from such tenth (10th) date at the Interest Rate for Advances until the amount due shall have been fully paid.

### **Special Covenants**

At all reasonable times and upon reasonable notice, the Borrower will allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project, to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and will furnish to the Issuer and the Trustee any information regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

The Borrower agrees to maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Loan Agreement and the Regulatory Agreement and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it, without the prior written consent of the Trustee; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided under the Loan Agreement. Nothing contained in the Loan Agreement shall limit the rights of (i) any direct or indirect owners of interests in the Borrower to (a) transfer, convey, sell or otherwise dispose (a "Transfer") their ownership interests to any Affiliate, or in connection with any estate planning, or by operation of law, or (b) make Transfers among and between themselves, or (ii) Borrower to make Transfers as otherwise permitted by (or subject to the terms and conditions set forth in) the Regulatory Agreement.

Notwithstanding anything to the contrary in the Loan Agreement but subject to the consent of the Freddie Mac Lender (to the extent required under the Freddie Mac Loan Documents), the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, (a) the transfer by the Investor Limited Partner of its interest in Borrower in accordance with the terms of Borrower's [Amended and Restated] Limited Partnership Agreement, as it may be amended from time to time (the "Partnership Agreement"), (b) the removal of a general partner of Borrower in accordance with the Partnership Agreement and the replacement thereof with the Investor Limited Partner, or any of its affiliates, or the removal of the Special Limited Partner pursuant to the Partnership Agreement, (c) the transfer of ownership interests in the Investor Limited Partner, (d) the transfer of the interests of the Investor Limited

Partner in Borrower to the Special Limited Partner or any of its affiliates, (e) any amendment to the Partnership Agreement to memorialize the transfers or removal described above, and (f) any transfer permitted as described under the caption “APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT—Sale or Transfer of the Project” without consent of the Issuer.

The Borrower has agreed to release the Issuer and the Trustee from, agrees that the Issuer and the Trustee will not be liable for, and indemnifies, defends and holds the Issuer and the Trustee harmless against, all liabilities, claims, costs and expenses (including attorneys’ fees) imposed upon, incurred or asserted against the Issuer or the Trustee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, financing, construction, occupation, possession, management, equipping, furnishing, maintenance, operation and use of the Project or from any work or thing done in or about the Project site, or any sidewalks, passageways, driveways, curbs, vaults and vault space, streets or parking areas on the Project site or adjacent thereto; (ii) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under the Loan Agreement, the Regulatory Agreement, the Note or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (iii) the Borrower’s failure to comply with any requirement of the Loan Agreement; (iv) any action taken or omitted to be taken by the Issuer or the Trustee at the request of or with the written consent of the Borrower; (v) the issuance of the Bonds, to the extent that such issuance directly relates to the Borrower’s furnishing information concerning the Project, the Borrower, its financial status or other matters relating to the Borrower; and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv) or (v) above; provided, however, that the indemnification provided in this section shall not apply to any matter arising or resulting from the gross negligence or willful misconduct of the Issuer or the Trustee.

The Borrower agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of the Loan Agreement, the Bonds, the Regulatory Agreement, the Note or the Indenture or any action taken at the request of or with the consent of the Borrower, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under the Loan Agreement, the Bonds, the Indenture, the Regulatory Agreement or the Note.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought under the Loan Agreement, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Borrower from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Borrower. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, but, unless such separate counsel is employed with the approval and consent of the Borrower, or because the indemnified party has been advised by counsel that there may be a conflict of interest between the Borrower and the indemnified party, the Borrower shall not be required to pay the fees and expenses of such separate counsel. The Borrower shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld, conditioned or delayed.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law.

The Borrower represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

The Borrower has agreed to maintain and preserve in good working order and condition, ordinary wear and tear and casualty loss excepted, all of its properties which are necessary or useful in the proper conduct of its business, and will from time to time make all necessary repairs, renewals, replacements, additions and improvements to said properties. All damage to apartment units will be repaired promptly and all apartment units will be maintained so as to be available at all times for habitation.

The Borrower will keep adequate records and books of account in which complete entries will be made in accordance with GAAP or indicating deviations therefrom, reflecting all financial transactions. The Borrower will deliver to the Trustee annually its year-end financial statements accompanied by a written statement of the Borrower's independent certified public accountants that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Borrower has violated any of the terms, covenants or provisions of the Loan Agreement insofar as it relates to accounting matters.

The Borrower will promptly pay and discharge: all taxes, assessments, fees, and other Government charges or levies or imposed upon it or upon any of its properties, income or profits, before the same will become delinquent; any Lien or other Indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any Lien existing at any time upon any of its properties; provided, however, that the Borrower will not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof will currently be contested in good faith by appropriate proceedings, (b) the Borrower will have set aside on its books adequate reserves with respect thereto, and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby. The Borrower agrees that, in the event it fails to pay or cause to be paid taxes, assessments, fees and other Government charges or levies or the premium on any required insurance and such failure constitutes a default under the Freddie Mac Loan Documents, the Trustee may make such payment, but is not obligated to do so, and the Trustee will be reimbursed by the Borrower therefor with interest on the amount so advanced at the Interest Rate for Advances as provided in the Loan Agreement.

The Borrower will at all times maintain or cause to be maintained, insurance of such types and in such amounts as required by the Freddie Mac Loan Documents.

The Borrower will promptly notify the Issuer and the Trustee in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may result in a change in the business or assets or in the financial condition of the Borrower which would materially impair the ability of the Borrower to perform the Loan Agreement, the Regulatory Agreement or the Note, or any other agreement or instrument contemplated therein.

Except to the extent contested in good faith, the Borrower has agreed to perform according to and will comply with all of its Contractual Obligations and all requirements of law if nonperformance thereof would result in a material adverse change in the business or assets or in the financial condition of the

Borrower which would materially impair the ability of the Borrower to perform the Loan Agreement, the Regulatory Agreement or the Note or any other agreement or instrument contemplated therein.

The Borrower will take and continue to take prompt action to remedy all environmental contamination, hazardous waste disposal and other environmental cleanup affecting the Project, if any, resulting from an order or request of a municipal, state, federal, administrative or judicial authority, or otherwise violating the law. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

The Borrower will not discriminate, and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not discriminate, by reason of race, creed, color, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require the manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of race, creed, color, handicap, national origin or sex.

The Borrower will not change the general character of its business as conducted at the date of the Loan Agreement, or engage in any type of business not reasonably related to its business as normally conducted.

#### **Additional Indebtedness**

So long as no Event of Default or Default under the Loan Agreement has occurred and be continuing, the Borrower will be permitted to incur any Indebtedness for any Project Cost or other obligation or payment due under the Loan Agreement, the Indenture or the Regulatory Agreement.

#### **Cooperation in Enforcement of Regulatory Agreement**

In order to maintain the exclusion from gross income under federal tax law of interest on the Bonds and to assure compliance with the laws of the State (including the Act), the Borrower agrees that it shall, concurrently with or before the execution and delivery of the Bonds, execute and deliver and cause to be recorded the agreement defined in the Indenture as the "Regulatory Agreement." The Borrower covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Issuer in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Issuer, to cooperate fully and promptly with the Issuer in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the annual certification to the Secretary of the Treasury required by the Regulatory Agreement.

The Issuer shall not incur any liability in the event of any breach or violation of a Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the Issuer from any claim or liability for such breach pursuant to the Loan Agreement.

## **Tax Exempt Status of the Bonds**

(a) It is the intention of the Issuer and the Borrower that interest on the Bonds shall be and remain excludable from gross income for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this section are for the benefit of the owners of the Bonds and the Issuer.

(b) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the Issuer under the Loan Agreement or any other funds of the Borrower, directly or indirectly, in such manner as would, or (ii) knowingly enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Bonds that would, or (iii) take or omit to take any other action that would, in each case cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this section it is necessary to restrict or to limit the yield on the investment of any moneys held under the Indenture or otherwise by the Trustee, the Borrower shall determine the limitations and so instruct the Trustee in writing and cause the Trustee to comply with those limitations under the Indenture.

(d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of counsel to the Issuer, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code as applicable to the Bonds.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

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

(g) The Borrower will use due diligence to complete the acquisition and rehabilitation of all of the units comprising the Project and reasonably expects to fully expend the entire \$ \_\_\_\_\_ principal amount of the Loan by the day before the Maturity Date.

(h) The Borrower will take such action or actions as necessary to ensure compliance with the Loan Agreement.

## **Useful Life**

The Borrower represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Bonds does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the proceeds of the Bonds.

## **Federal Guarantee Prohibition**

The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

## **Prohibited Facilities**

The Borrower represents and warrants that no portion of the proceeds of the Loan shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Loan shall be used for an office unless (a) the office is located on the premises of facilities constituting a portion of the Project and (b) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

## **No Optional Prepayment**

The Loan may not be prepaid by the Borrower in whole or in part.

## **Events of Default**

The Loan Agreement provides that each of the following is an “Event of Default”: (a) the Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable or within the Loan Payment Cure Period; (b) the Borrower shall fail to observe or perform any other agreement, term or condition under the Loan Agreement and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower and the Investor Limited Partner by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure will not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice; (c) the Borrower shall (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect and not dismissed within ninety (90) days; (iii) voluntarily commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or has such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undischarged and unstayed for ninety (90) days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of (90) days; (d) any representation or warranty made by the Borrower in the Loan Agreement or any statement in any report, certificate, financial statement or other instrument furnished in connection with the Loan Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and (e) there shall occur an “Event of Default” as defined in the Indenture or the Regulatory Agreement.

## **Remedies**

If any Event of Default occurs and continues, the Trustee may, if payment of the Bonds is accelerated pursuant to the Indenture, declare all Loan Payments, together with any other amounts payable by the Borrower under the Loan Agreement and the Note, to be immediately due and payable and

any amounts collected will be paid into the Bond Fund and applied in accordance with the provisions of the Indenture. The Trustee or the Issuer may also pursue any remedies at law or in equity to collect all amounts due and thereafter to become due under the Loan Agreement, the Regulatory Agreement and the Note, or enforce performance and observance of any other obligation, agreement or covenant of the Borrower under those instruments.

### **Amendments, Changes and Modifications of the Loan Agreement**

Except as otherwise expressly provided in the Loan Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, the Loan Agreement, the Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture, as applicable. See “APPENDIX C - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Amendments to Loan Agreement, Regulatory Agreement and Note.”

### **Subordination to Freddie Mac Loan Documents**

Notwithstanding anything in the Loan Agreement to the contrary, Borrower, Trustee and Issuer acknowledge that the obligations of Borrower under the Loan Agreement are subject and subordinate to the Freddie Mac Loan Documents. Notwithstanding any provision in this Loan Agreement to the contrary, no obligations of the Borrower under the Loan Agreement shall be payable except from (A) Surplus Cash or (B) funds that are not derived from (i) revenues of the Project, or (ii) any reserve or deposit made with the Freddie Mac Lender or any other party as required by Freddie Mac in connection with the Freddie Mac Loan Documents or (C) any proceeds of the Freddie Mac Loan which have been deposited into the Collateral Fund or the Initial Deposit Account of the Bond Fund by or at the direction of the Freddie Mac Lender. No claims or actions shall be made (or payable) under the Loan Agreement against the Project or the assets of the Borrower, except for Surplus Cash of the Borrower. Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Freddie Mac Loan Documents. In addition, the rights and obligations of the parties under the Loan Agreement and all other documents evidencing, implementing, or securing the Loan Agreement (the “Other Bond Documents”) are and shall be subordinated in all respects rights and obligations of the parties to and under the Freddie Mac Loan Documents. In the event of any conflict between the provisions of (i) the Loan Agreement or the Other Bond Documents and (ii) the provisions of the Freddie Mac Loan Documents, the provisions of the Freddie Mac Loan Documents shall control. The provisions under this heading shall control over any inconsistent provisions in the Loan Agreement or the Other Bond Documents. Any subsequent amendment to the Loan Agreement affecting the provisions under this heading or the rights of the Freddie Mac Lender with respect to the Borrower or Project is subject to prior written approval of the Freddie Mac Lender and Freddie Mac (so long as the Project is subject to a mortgage held or under a commitment to purchase by Freddie Mac). The provisions described in this section shall survive the termination of the Loan Agreement.

## APPENDIX E

### SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT

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

#### Definitions

Unless otherwise expressly provided in the Regulatory Agreement or unless the context clearly requires otherwise, capitalized terms not defined in the Regulatory Agreement shall bear the meaning given them in the Indenture.

“Adjusted Income” – The adjusted income of a person who intends to reside in a residential unit (together with the adjusted income of all persons the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed in Regulation Section 1.103-8.

“Affiliated Party” – (1) a Person whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code, (2) a Person who together with the Borrower are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein), (3) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code or (4) an S Corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Area” – The San Diego County, California, Primary Statistical Area.

“Bonds” – The \$\_\_\_\_\_ Chula Vista Housing Authority Multifamily Housing Revenue Bonds (Garden Villas) Series 2014A.

“Borrower’s Tax Certificate” – The certificate of the Borrower, dated as of the Closing Date, with respect to certain Project Costs delivered to the Issuer by the Borrower.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Resolution” – Resolution No. \_\_\_\_\_ adopted by CDLAC on \_\_\_\_\_, 2014, as amended.

“Certificate of Continuing Program Compliance” – The certificate with respect to the Project to be filed by the Borrower with the Issuer, which shall be substantially in the form attached as an exhibit to the Regulatory Agreement.

“Closing Date” – June \_\_, 2014.

“Costs of Issuance” – All costs incurred in connection with the issuance of the Bonds, generally those treated as Costs of Issuance under present Treasury Department regulations and rulings, and including all costs incurred in connection with the authorization, sale and issuance of the Bonds and the transactions contemplated in the Regulatory Agreement, including, but not limited to (1) counsel fees



(including bond counsel, purchaser’s counsel, Issuer’s counsel, Trustee’s counsel, Borrower’s counsel, as well as any other specialized counsel fees and expenses incurred in connection with the borrowing); (2) financial advisor fees and expenses incurred in connection with the borrowing; (3) rating agency fees, if any; (4) initial and prepaid Trustee’s fees incurred in connection with the borrowing; (5) paying agent and certifying and authenticating agent fees related to issuance of the Bonds; (6) accountant fees related to issuance of the Bonds; (7) costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing or voter referendum); (8) costs of engineering and feasibility studies necessary to the issuance of the Bonds (as opposed to such studies related to acquisition or rehabilitation of the Project, but not to the borrowing); and (9) the Issuer fees.

“Income Certification” – The Income Computation and Certification Form in substantially the form attached to the Regulatory Agreement.

“Indenture” – The Trust Indenture between the Issuer and the Trustee, dated as of June 1, 2014, as it may be amended from time to time.

“Issuer Fee” – The administrative fee of the Issuer payable on the Closing Date in the amount of one-eighth of one percent (1/8%) of the aggregate original principal amount of the Bonds and (i) the ongoing administrative fee payable in advance every six (6) months commencing on the Closing Date in the amount of one-half (1/2) of one-eighth of one percent (1/8%) of the aggregate original principal amount of the Bonds.

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

“Low Income Tenants” – Individuals or families with Adjusted Income which does not exceed 60 percent of the Median Income for the Area as adjusted in a manner consistent with the determination of lower income families under Section 8 of the United States Housing Act of 1937 and as adjusted for household size as set forth below. In no event, however, will the occupants of a residential unit be considered to be Low Income Tenants if all the occupants are students, as defined in Section 151(c)(4) of the Code, as such may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 151(c)(4) defines a student as an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

<i>Household Size</i>	<i>Adjustment</i>
1	70%
2	80%
3	90%
4	100%
5	108%
6	116%
7	124%
8	132%

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

“Median Income for the Area” – The median gross income for the Area as most recently determined by the Secretary of Treasury pursuant to Section 142(d)(2)(B) of the Code.

“Project” – The Project Facilities and the Project Site.

“Project Costs” – To the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Borrower with respect to the acquisition, rehabilitation and equipping of the Project, whether paid or incurred prior to or after the sixtieth day preceding December 10, 2013, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal or demolition of existing structures, the rehabilitation and equipping of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the costs of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project) and all other costs approved by Bond Counsel.

“Project Facilities” – The buildings, structures and other improvements to be rehabilitated on the Project Site that are being financed with proceeds of the Bonds, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

“Project Site” or “Property” – The parcel or parcels of real property described in an exhibit, which is attached to the Regulatory Agreement, and all rights and appurtenances thereunto appertaining.

“Qualified Project Costs” – The Project Costs (excluding Costs of Issuance) incurred after the sixtieth day preceding December 10, 2013, which either constitute land or property of a character subject to the allowance for depreciation under Section 167 of the Code or are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts within the meaning of Regulation Section 1.103-8(a)(1)(i); provided, however, that only such portion of interest accrued during rehabilitation of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs paid from Bond proceeds and interest earnings thereon; and provided further that interest accruing after the completion date shall not constitute a Qualified Project Cost; and provided still further that if any portion of the Project is being rehabilitated by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only the actual out-of-pocket costs incurred by such Affiliated Party in rehabilitating the Project (or any portion thereof) within the meaning of Section 147(d)(2) of the Code, as provided in the Tax Certificate.

“Qualified Project Period” – The period beginning on the later of (i) the first day on which at least ten percent (10%) of the dwelling units in the Project are first occupied, and (ii) the Closing Date and ending on the later of (a) the date which is 55 years after the date on which fifty percent (50%) of the dwelling units are occupied, (b) the first day on which no tax exempt bonds with respect to the Project are Outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates; provided that the Qualified Project Period may be shortened with the written consent of the Issuer and CDLAC in their sole discretion, and upon receipt by

the Issuer of an opinion of Bond Counsel that such action, in and of itself, will not cause interest on the Bonds to be includable in gross income for federal tax purposes.

“Very Low Income Tenants” – Individuals or families with Adjusted Income which does not exceed 50 percent of the Median Income for the Area as adjusted in a manner consistent with determination of lower income families under Section 8 of the United States Housing Act of 1937 and as adjusted for household size as set forth below. In no event, however, will the occupants of a residential unit be considered to be Very Low Income Tenants if all the occupants are students, as defined in Section 151(c)(4) of the Code, as such, may be amended, no one of which is entitled to file a joint federal income tax return. Currently, Section 151(c)(4) defines a student as an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

<i>Household Size</i>	<i>Adjustment</i>
1	70%
2	80%
3	90%
4	100%
5	108%
6	116%
7	124%
8	132%

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

Capitalized terms which are not defined in the Regulatory Agreement shall have the meanings assigned to them in the Indenture.

#### **Acquisition, Rehabilitation, Equipping and Completion of the Project.**

The Borrower represents, as of the date of the Regulatory Agreement, and covenants, warrants and agrees as follows:

(a) The Borrower has incurred a substantial binding obligation to acquire, rehabilitate and equip the Project, pursuant to which the Borrower is obligated to expend at least ninety five percent of the net sale proceeds of the Bonds.

(b) The Borrower’s reasonable expectations respecting the total cost of the acquisition, rehabilitation and equipping of the Project and the disbursement of Bond proceeds are accurately set forth in the Borrower’s Tax Certificate attached to the Tax Certificate which has been delivered to the Issuer.

(c) The Borrower will proceed with due diligence to complete the acquisition, rehabilitation and equipping of the Project and expects to expend the full amount of the proceeds of the Loan for Project Costs prior to three years from the Closing Date.

(d) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee are true and correct.

(e) Money on deposit in any fund or account in connection with the Bonds, whether or not such money was derived from other sources, shall not be used by or under the direction of the Borrower, in a manner which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code, and the Borrower specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Bonds from being “arbitrage bonds” under the Code.

(f) The Borrower (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or the Regulatory Agreement.

(g) The Borrower shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof.

### **Residential Rental Property.**

The Borrower acknowledges and agrees that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) until the expiration of the Qualified Project Period. To that end, and for the term of the Regulatory Agreement, the Borrower represents, as of the date of the Regulatory Agreement, and covenants, warrants and agrees as follows:

(a) The Project is being acquired, rehabilitated and equipped for the purpose of providing multifamily residential rental property, and the Borrower shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly rehabilitated units, and, to the extent required by the Code and the Regulations, each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink; provided that any tenant may, but shall not be obligated to, provide a refrigerator for the unit to be occupied.

(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 or used as a condominium or by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. The Borrower shall not take any steps in connection with a conversion of the Project to a condominium or cooperative ownership except with the prior written approving opinion of Bond Counsel that by reason of any such action the interest on the Bonds will not become includable in gross income for federal income tax purposes.

(e) All of the dwelling units (except for two manager’s units described in (g) below) 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 by the Regulatory Agreement or any other restriction to be imposed on the Project to be leased or rented to Low Income Tenants, Very Low Income Tenants and to holders of Section 8 certificates or vouchers or, in the case of any other restrictions imposed on the Project, to tenants meeting the income and affordability restrictions required thereby.

(f) The Project 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 will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No dwelling unit in any building in the Project shall be occupied by the Borrower unless the building contains five or more dwelling units, in which case two units may be occupied by the Borrower or by persons related to or affiliated with the Borrower such as a resident manager or maintenance personnel. Subject to the foregoing limitation, one unit in the Project may be occupied by resident managers or maintenance personnel.

(h) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing 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 and thereby cause the Bonds to be redeemed or apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the Regulations.

(i) The Borrower shall not discriminate on the basis of race, religion, creed, color, ethnic group identification, sex, sexual preference, age, source of income (e.g. AFDC, SSI), mental or physical disability, national origin or marital status in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(j) Following the expiration or termination of the Qualified Project Period, Low Income Units and Very Low Income Units shall remain available to the Low Income Tenants and Very Low Income Tenants then occupying such units at the date of expiration or termination of the Qualified Project Period at a rent not greater than the rent determined pursuant to the provisions of the Regulatory Agreement described in paragraphs (a)(i) and (ii) under the heading “Low Income and Very Low Income Units.” below until the earliest of any of the following occurs:

(i) The household’s income exceeds 140 percent of the income at which such household would qualify as a Low Income Tenant or Very Low Income Tenant, applicable.

(ii) The household voluntarily moves or is evicted for “good cause.” For these purposes, “good cause” means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the lease agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the Project, or the purposes or special programs of the Project.

(iii) Thirty (30) years after the commencement of the Qualified Project Period.

(iv) The Borrower pays the relocation assistance and benefits to such Low Income Tenants or Very Low Income Tenants, as applicable, as provided in Section 7264(b) of the Government Code of the State of California.

(k) The Issuer may but shall not be required to monitor the Borrower's compliance with the provisions described in subparagraph (j) above.

**Low Income and Very Low Income Units.**

(a) Pursuant to the requirements of Section 142(d) of the Code and applicable provisions of the Act, the Borrower represents, as of the date of the Regulatory Agreement, and warrants, covenants and agrees as follows:

(i) During the Qualified Project Period, not less than ten percent (10%) of the units in the Project shall be designated as Very Low Income Units and shall be continuously occupied by or held available for occupancy by Very Low Income Tenants at monthly rents paid by tenants which do not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area, as adjusted for household size utilizing the percentages set forth above under the definition of Very Low Income Tenant less a reasonable deduction for utilities paid by the tenant as determined by the Issuer and assuming (solely for purposes of the above-described limit on the amount of monthly rent, and not for purposes of determining whether individuals or families are Very Low Income Tenants for purposes of Section 142(d) of the Code), the following unit sizes and household sizes:

<i>Unit Size</i>	<i>Household Size</i>
One Bedroom	Two Persons
Two Bedrooms	Three Persons
Three Bedrooms	Four Persons

Such Very Low Income Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project.

A unit occupied by a Very Low Income Tenant who at the commencement of the occupancy is a Very Low Income Tenant shall be treated as occupied by a Very Low Income Tenant until a recertification of such tenant's income in accordance with the provisions described in paragraph 4(c)(i) below demonstrates that such tenant no longer qualifies as a Very Low Income Tenant and thereafter such unit shall be treated as any residential unit of comparable or smaller size in the Project occupied by a new resident other than a Very Low Income Tenant. Moreover, a unit previously occupied by a Very Low Income Tenant and then vacated shall be considered occupied by a Very Low Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

(ii) In addition to the Very Low Income Units set aside under paragraph (i) above, during the Qualified Project Period not less than another thirty percent (30%) of the units in the Project shall be designated as Low Income Units and shall be continuously occupied by or held available for occupancy by Low Income Tenants at monthly rents which do not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area, as adjusted for household size utilizing the percentages set forth above under the definition of Low Income Tenant less a reasonable deduction for utilities paid by the tenant as determined

by the Issuer and assuming (solely for purposes of the above-described limit on the amount of monthly rent, and not for purposes of determining whether individuals or families are Low Income Tenants for purposes of Section 142(d) of the Code), the following unit sizes and household sizes:

<i>Unit Size</i>	<i>Household Size</i>
One Bedrooms	Two Persons
Two Bedrooms	Three Persons
Three Bedrooms	Four Persons

Such Low Income Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project.

A unit occupied by a Low Income Tenant who at the commencement of the occupancy is a Low Income Tenant shall be treated as occupied by a Low Income Tenant until a recertification of such tenant's income in accordance with the provisions described in paragraph (c)(ii) below demonstrates that such tenant no longer qualifies as a Low Income Tenant and thereafter such unit shall be treated as any residential unit of comparable or smaller size in the Project occupied by a new resident other than a Low Income Tenant. Moreover, a unit previously occupied by a Low Income Tenant and then vacated shall be considered occupied by a Low Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

(b) Immediately prior to a Very Low Income Tenant's occupancy of a Very Low Income Unit and a Low Income Tenant's occupancy of a Low Income Unit, the Borrower will obtain and maintain on file an Income Certification from each Very Low Income Tenant occupying a Very Low Income Unit and each Low Income Tenant occupying a Low Income Unit, dated immediately prior to the initial occupancy of such Very Low Income Tenant or Low Income Tenant, as applicable, in the Project. In addition, the Borrower will provide such further information as may be required in the future by the State of California, the Issuer, the Act, Section 142(d) of the Code and the Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. The Borrower shall verify that the income provided by an applicant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a federal income tax return for the most recent tax year, (2) obtain a written verification of income and employment from the applicant's current employer, (3) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income satisfactory to the Issuer or (4) such other information as may be reasonably requested by the Issuer.

Copies of the most recent Income Certifications for Low Income Tenants and Very Low Income Tenants shall be attached to the quarterly report to be filed with the Issuer as required in the provisions described in paragraph (d) below.

(c) (i) Immediately prior to the first anniversary date of the occupancy of a Very Low Income Unit by one or more Very Low Income Tenants, and on each anniversary date thereafter, the Borrower shall recertify the income of the occupants of each Very Low Income Unit by obtaining a completed Income Certification based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 140% of the income at which such

household would qualify as Very Low Income Tenants, such household will no longer qualify as Very Low Income Tenants, and to the extent necessary to comply with the requirements of the provisions described in paragraph (a)(i) above, the Borrower will rent the next available unit of comparable or smaller size to one or more Very Low Income Tenants. No tenants shall be denied continued occupancy in the Project because, after occupancy, their income increases to make them no longer qualify as Very Low Income Tenants.

(ii) Immediately prior to the first anniversary date of the occupancy of a Low Income Unit by one or more Low Income Tenants, and on each anniversary date thereafter, the Borrower shall recertify the income of the occupants of each Low Income Unit by obtaining a completed Income Certification based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 140% of the income at which such household would qualify as Low Income Tenants, such household will no longer qualify as Low Income Tenants and to the extent necessary to comply with the requirements of the provisions described in paragraph 4(a)(ii) above, the Borrower will rent the next available unit of comparable size to one or more Low Income Tenants.

(d) Upon commencement of the Qualified Project Period, and within ten days of the last day of each quarter thereafter during the term of the Regulatory Agreement, the Borrower shall advise the Issuer of the status of the occupancy of the Project by delivering to the Issuer a Certificate of Continuing Program Compliance.

(e) The Borrower shall maintain complete and accurate records pertaining to the Low Income Units and Very Low Income Units, and shall permit any duly authorized representative of the Issuer, the Agent, 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 Low Income Units and Very Low Income Units.

(f) The Borrower shall submit to the Secretary of the Treasury annually on the anniversary date of the start of the Qualified Project Period, or such other date as is required by the Secretary, a certification that the Project continues to meet the requirements of Section 142(d) of the Code, and shall provide a copy of such certification to the Issuer.

(g) The Borrower shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. The Borrower shall not collect any additional fees or payments from a Low Income Tenant or a Very Low Income Tenant except security deposits or other deposits required of all tenants. The Borrower shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of those allowed under the Section 8 Program. The Borrower shall not discriminate against applicants for Low Income Units or Very Low Income Units on the basis of source of income (i.e., AFDC or SSI), and the Borrower shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (ability to pay shall be demonstrated if an applicant can show that the same percentage or more of the applicant's income has been paid for rent in the past as will be required to be paid to rent the Very Low Income Unit to be occupied).

(h) Each lease pertaining to a Low Income Unit or Very Low Income Unit shall contain a provision to the effect that the Borrower has relied on the Income Certification and supporting information supplied by the applicant in determining qualification for occupancy of the Low Income Unit



or Very Low Income Unit, as applicable, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. Each lease will also contain a provision that failure to cooperate with the annual recertification process reasonably instituted by the Borrower pursuant to the provisions described in paragraph (c) above may, at the option of the Borrower, disqualify the unit as a Low Income Unit or Very Low Income Unit, as applicable, or provide grounds for termination of the lease.

(i) Prior to the Closing Date, the Borrower agrees to provide to the Issuer a copy of the form of application and lease to be provided to prospective Low Income Tenants and Very Low Income Tenants. The term of the lease shall be not less than thirty (30) days.

(j) To the extent required by law, notwithstanding the termination of the Qualified Project Period, the rent of “in-place” Low Income Tenants and Very Low Income Tenants at the conclusion of the Qualified Project Period will continue to be governed by the applicable affordability restrictions described in this section, so long as those tenants continue to live in the Project. The foregoing shall not prevent the Borrower from terminating a tenant’s occupancy in accordance with the terms of such tenant’s lease or from declining to extend such tenant’s lease.

### **Tax-Exempt Status of Bonds**

(a) The Borrower and the Issuer will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax Exempt nature of the interest on the Bonds and, if either of them should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(b) The Borrower and the Issuer will file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee (with a copy to the Borrower), in order to insure that the requirements and restrictions of the Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of the Regulatory Agreement in the real property records of the County.

### **Sale or Transfer of the Project.**

The Borrower represents in the Regulatory Agreement that it intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, and covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated in the Regulatory Agreement), without obtaining the prior written consent of the Issuer (except as provided in the second to last paragraph set forth below) and upon receipt by the Issuer (except as provided in the second to last paragraph set forth below) of (i) such certifications as deemed necessary by the Issuer to establish that the Borrower shall not be in default under the Regulatory Agreement or under the Loan Agreement or, if any such defaults exist, the purchaser or assignee undertakes to cure such defaults to the satisfaction of the Issuer; (ii) a written instrument by which the Borrower’s purchaser or transferee has assumed in writing and in full the Borrower’s duties and obligations under the Regulatory Agreement, (iii) an opinion of counsel for the transferee that the transferee has duly assumed the obligations of the Borrower under the Regulatory Agreement and that such obligations and the Regulatory Agreement are binding on the transferee, (iv) documentation from the transferee reflecting the transferee’s experience or, should the transferee choose to have a property manager run the Project, a property manager’s experience with owning and/or operating multifamily housing projects such as the Project and with use and occupancy restrictions similar to those contained in the Regulatory Agreement, and (v) an opinion of Bond Counsel addressed to the Issuer to the effect that

such transfer will not cause interest on the Bonds, to become includable in the gross income of the recipients thereof for federal income tax purposes. The Borrower shall not allow any non-profit entity, which is not as of the date of the Regulatory Agreement a general partner of the Borrower, to become a general partner of the Borrower nor release any non-profit entity which is a general partner of the Borrower as of the date of the Regulatory Agreement from the limited partnership without the prior written consent of an Authorized Officer of the Issuer (which consent shall not be unreasonably withheld, delayed or conditioned).

No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement with respect to any action or inaction taken prior to such transfer.

It is expressly stipulated and agreed in the Regulatory Agreement that any sale, transfer or other disposition of the Project in violation of the transfer provisions described herein 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. Not less than 30 days prior to consummating any sale, transfer or disposition of any interest in the Project, the Borrower shall deliver to the Issuer and the Trustee a notice in writing explaining the nature of the proposed transfer.

Notwithstanding the above, the following transfers will be permitted without consent of the Issuer: (a) a transfer of partnership interests in Borrower to or by the tax credit investor (the "Tax Credit Investor") under the limited partnership agreement of the Borrower (the "Partnership Agreement"), or its designee pursuant to the partnership agreement of the Borrower; (b) a transfer of the limited partner interests in the Borrower of the Tax Credit Investor to an affiliate of the Tax Credit Investor; (c) a transfer of the limited partner interests in the Borrower of the Tax Credit Investor to nonaffiliates of the Tax Credit Investor; (d) the removal and replacement of the general partner of the Borrower under the Partnership Agreement (the "General Partner") pursuant to the Partnership Agreement or pursuant to the assignment of general partnership interests of the Borrower to the Freddie Mac Lender, or the removal of the Special Limited Partner pursuant to the Partnership Agreement; (e) the transfer of ownership interests in the Investor Limited partner or the Special Limited Partner, (f) the transfer of the interests of the Investor Limited Partner in Borrower to Borrower's Special Limited partner or any of its affiliates, and (g) any amendment to the Partnership Agreement to memorialize the transfers or removal described above. Prior to any transfer of partnership interests or removal of the General Partner permitted in the provisions described in paragraph (d) above, the Issuer shall receive an opinion of counsel acceptable to the Issuer to the effect that such transfer will not cause interest on the Bonds, to become includable in the gross income of the recipients thereof for federal income tax purposes.

### **Foreclosure.**

Notwithstanding anything contained in the transfer provisions described above to the contrary, neither the consent of the Issuer nor the delivery of items (i) through (v) of the first paragraph of the transfer provisions described above (the "Transfer Conditions") shall be required in the case of a transfer by foreclosure or deed in lieu of foreclosure, whereby the Freddie Mac Lender becomes the owner of the Project, and nothing shall otherwise affect the right of the Trustee to foreclose on the Project or accept a deed in lieu of foreclosure. The Transfer Conditions shall be applicable to any subsequent transfer by the Trustee.

### **Term.**

The Regulatory Agreement and all and several of the terms thereof shall become effective upon its execution and delivery and shall remain in full force and effect during the Qualified Project Period, or for such longer period as is provided in the provisions described under the captions "Residential Rental

Property” above, and in the CDLAC Resolution, it being expressly agreed and understood that the provisions of the Regulatory Agreement are intended to survive the retirement of the Bonds and expiration of the Indenture, the Loan Agreement and the Loan. Notwithstanding any other provisions of the Regulatory Agreement to the contrary, the entire Regulatory Agreement, or any of the provisions or sections thereof, may be terminated prior to the expiration of the Qualified Project Period upon agreement by the Issuer, the Trustee (if Bonds are still outstanding) and the Borrower only if there shall have been received by the Issuer an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or the exemption from State personal income taxes of the interest on the Bonds.

The terms of the Regulatory Agreement to the contrary notwithstanding (except as to certain indemnification provisions), the Regulatory Agreement, and each and all of the terms of the Regulatory Agreement, shall terminate and be of no further force or effect in the event of an involuntary noncompliance by the Borrower with the provisions of the Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date which prevents the Issuer and the Trustee from enforcing the provisions of the Regulatory Agreement, foreclosure on the Project or delivery of a deed in lieu of foreclosure or condemnation or a similar event, but only if within a reasonable period thereafter the Bonds are (or have been) redeemed or retired or amounts received as a consequence of such event are used to provide a project that meets the requirements of the Code set forth in the Regulatory Agreement; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure on the Project or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any Affiliated Party obtains an ownership interest in the Project for federal income tax purposes. Upon the termination of the terms of the Regulatory Agreement, the parties agree to execute, deliver and record appropriate instruments of release and discharge of the terms of the Regulatory Agreement; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of the Regulatory Agreement in accordance with its terms.

#### **Covenants to Run With the Land.**

In the Regulatory Agreement, the Borrower subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in the Regulatory Agreement. The Issuer and the Borrower declare their express intent that the covenants, reservations and restrictions set forth in the Regulatory Agreement shall be deemed covenants running with the land and shall pass to and be binding upon the Borrower’s successors in title to the Project; provided, however, that on the termination of the Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

#### **Enforcement.**

If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower (or such longer period if the Borrower provides the Issuer (if any Bonds are outstanding) with an opinion of Bond Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds), then the Issuer may, or upon the direction of the Issuer, the Trustee may, subject to certain provisions of the Regulatory Agreement, and to

the extent indemnified pursuant to the provisions of the Indenture, and acting on its own behalf or on behalf of the Issuer, declare an “Event of Default” to have occurred under the Regulatory Agreement, and, at its option, may take any one or more of the following steps:

- (i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants under the Regulatory Agreement or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee under the Regulatory Agreement;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;
- (iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower under the Regulatory Agreement.

The Borrower agrees that specific enforcement of the Borrower’s agreements contained in the Regulatory Agreement is the only means by which the Issuer may fully obtain the benefits of such agreements made by the Borrower therein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower under the Regulatory Agreement.

The Trustee shall have the right, in accordance with the provisions of the Regulatory Agreement and the provisions of the Indenture, upon notice to but without the consent or approval of the Issuer, but subject to the Unassigned Issuer’s Rights of the Issuer, to exercise any or all of the rights or remedies of the Issuer under the Regulatory Agreement. All fees, costs and expenses of the Trustee (including, without limitation, reasonable attorneys fees) incurred in taking any action pursuant to the Regulatory Agreement shall be the sole responsibility of the Borrower.

After the Indenture has been discharged, or if the Trustee fails to act under the Regulatory Agreement, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified above to the same extent and with the same effect as if taken by the Trustee. After the date on which no Bonds remain outstanding as provided in the Indenture, the Trustee shall no longer have any duties or obligations under the Regulatory Agreement, and all references to the Trustee in the Regulatory Agreement shall be deemed references to the Issuer.

Notwithstanding anything contained in the Regulatory Agreement or the Indenture to the contrary, the occurrence of an Event of Default under the Regulatory Agreement shall not (i) be deemed, under any circumstances whatsoever, to constitute a default under the Indenture, the Loan Agreement, or the Freddie Mac Loan Documents, except as may be otherwise specified therein or (ii) impair, defeat or render invalid the lien of the Freddie Mac Mortgage.

Under no circumstances shall the Issuer or the Trustee:

- (i) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Freddie Mac Loan; or
- (ii) interfere with or attempt to influence the exercise by Freddie Mac Lender of any of its rights with respect to the Freddie Mac Loan, including, without limitation, Freddie Mac

Lender's remedial rights under the Freddie Mac Loan Documents upon the occurrence of an event of default by the Borrower under the Freddie Mac Loan Documents.

The rights of the Trustee under the Regulatory Agreement are in addition to all rights conferred upon the Trustee under the Indenture and in no way limit those rights.

### **Obligation of Borrower; Limitations on Recourse to Borrower.**

Notwithstanding any provisions of the Regulatory Agreement to the contrary, all obligations of the Borrower under the Regulatory Agreement for the payment of money (including payment of the Issuer Fee and any other fees, costs and expenses of the Issuer) and all claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under the Regulatory Agreement, including indemnification obligations, shall not be secured by or in any manner constitute a lien on the Project and no person shall have the right to enforce such obligations other than directly against the Borrower without recourse to the Project, and all such obligations shall be subordinate in priority, in right to payment and in all other respects to the obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Loan Documents. Except as otherwise provided in the Regulatory Agreement, no subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner of the Project (including the Borrower) under the Regulatory Agreement. Such obligations shall be the Obligations of the Person who was the owner of the Project at the time the default or breach was alleged to have occurred, and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the owner of the Project.

The following obligations of the Borrower shall, subject to the limitations set forth in the preceding paragraph, and elsewhere in the Regulatory Agreement, be and remain the joint and several full recourse obligations of the Borrower and each general partner of the Borrower (other than any nonprofit general partner):

- (i) the Borrower's obligations to the Issuer and the Trustee and the Borrower's obligation to pay any and all rebate amounts that may be owed with respect to the Bonds as provided in the Loan Agreement; and
- (ii) the Borrower's obligations to indemnify the Issuer and the Trustee of the Regulatory Agreement.

### **CDLAC Requirements.**

The acquisition, rehabilitation, equipping and operation of the Project and the financing thereof are and shall be in compliance with the conditions set forth in the CDLAC Resolution, a copy of which is attached as an exhibit to the Regulatory Agreement. The Issuer shall monitor and enforce the Borrower's compliance with the provisions described in this paragraph (the "CDLAC Provisions"). The Borrower shall prepare and submit to CDLAC on each anniversary of the Closing Date, and on such other date as is reasonably requested by CDLAC, a Certificate of Compliance in substantially the form attached as an exhibit to the Regulatory Agreement, executed by an authorized representative of the Borrower. CDLAC shall be a third-party beneficiary of the Regulatory Agreement solely for purposes of enforcing the terms of the CDLAC Resolution. CDLAC shall have the right to enforce the terms of the CDLAC Resolution through an action for specific performance or any other available remedy; provided, however, that CDLAC shall not take any action or enforce any remedy that would be materially adverse to the interests of the Bondholders and any such action or enforcement shall otherwise be subject to the terms, conditions and limitations applicable to the enforcement of remedies under the Regulatory Agreement.



## APPENDIX F

### FORM OF CONTINUING DISCLOSURE AGREEMENT

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**Chula Vista Housing Authority**  
**Multifamily Housing Revenue Bonds**  
**(Garden Villas) Series 2014A**

This Continuing Disclosure Agreement, dated as of June 1, 2014 (this “Continuing Disclosure Agreement”), is executed and delivered by Kiku Gardens Housing Partners, LP, a California limited partnership (the “Borrower”) and U.S. Bank National Association, as dissemination agent (the “Dissemination Agent”) and trustee (the “Trustee”) for the above-captioned bonds (the “Bonds”). The Bonds are being issued pursuant to a Trust Indenture, dated as of June 1, 2014 (the “Indenture”) between the Chula Vista Housing Authority (the “Issuer”) and the Trustee. Pursuant to the Indenture and the Loan Agreement dated as of June 1, 2014 (the “Agreement”), the Dissemination Agent and the Borrower covenant and agree as follows:

**Section 1. Purpose of the Continuing Disclosure Agreement.** This Continuing Disclosure Agreement is being executed and delivered by the Borrower and the Dissemination Agent for the benefit of the Holders and in order to assist the Participating Underwriter in complying with the Rule (defined below). The Borrower and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Continuing Disclosure Agreement, and has no liability to any Person, including any holder of the Bonds or Beneficial Owner, with respect to any such reports, notices or disclosures.

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

*“Annual Report”* shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Continuing Disclosure Agreement.

*“Audited Financial Statements”* means, in the case of the Borrower, the annual audited financial statements of the Borrower prepared in accordance with generally accepted accounting principles, if any.

*“Beneficial Owner”* shall mean any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including Persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

*“Disclosure Representative”* shall mean, with respect to the Borrower, the administrator of the Project or his or her designee, or such other Person as the Borrower shall designate in writing to the Dissemination Agent from time to time.

*“Dissemination Agent”* shall mean U.S. Bank National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

*“Material Events”* shall mean any of the events listed in Section 5(a) of this Continuing Disclosure Agreement.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934. All documents provided to the MSRB shall be in an electronic format and accompanied by identifying information, as prescribed by the MSRB. Initially, all document submissions to the MSRB pursuant to this Continuing Disclosure Agreement shall use the MSRB’s Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org).

“Participating Underwriter” means, together, Citigroup Global Markets Inc. and U.S. Bancorp Municipal Securities Group., and their successors and assigns.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**Section 3. Provision of Annual Reports.** (a) The Borrower will, or will cause the Dissemination Agent to, not later than 180 days following the end of the Borrower’s fiscal year, commencing with the fiscal year ending in 2013, provide to the MSRB an Annual Report which is consistent with the requirements described below. No later than 15 Business Days prior to said date, the Borrower will provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). In each case, the Annual Report of the Borrower may be submitted as a single document or as separate documents comprising a package and may cross reference other information, provided that the audited financial statements for the prior calendar year of the Borrower may be submitted separately from the balance of its Annual Report.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing an Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent will contact the Disclosure Representative to determine if the Borrower is in compliance with subsection (a).

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent will send a notice to the MSRB in substantially the form attached as Exhibit B to this Continuing Disclosure Agreement.

(d) The Dissemination Agent will file a report with the Borrower and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Continuing Disclosure Agreement, stating the date it was provided.

**Section 4. Content of Annual Reports.** The Borrower’s Annual Report will contain or incorporate by reference the financial information or operating data with respect to the Project, provided at least annually, of the type included in Exhibit A hereto, which Annual Report may, but is not required to, include Audited Financial Statements. If the Borrower’s audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report will contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements will be filed in the same manner as the Annual Report when they become available; and

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an “Obligated Person” (as defined by the Rule), which have been filed with the MSRB. The Borrower will clearly identify each such other document so incorporated by reference.



**Section 5. Reporting of Material Events.** (a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events (each, a “Material Event”):

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) Modifications to rights of Holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material.

(b) The Dissemination Agent shall, within three (3) Business Days of obtaining actual knowledge of the occurrence of any potential Material Event, pursuant to subsection (c) of this Section or otherwise, provide the Disclosure Representative with notice (by facsimile transmission confirmed by telephone). While the Dissemination Agent is also the Trustee, the Dissemination Agent shall not be

deemed to have actual knowledge of those items listed in clauses (ii), (vi), (vii), (x), and (xi) above without the Dissemination Agent having received written notice of such event. While the Dissemination Agent is not also the Trustee, the Dissemination Agent shall not be deemed to have actual knowledge of those items listed in clauses (i) - (xiv) above without the Dissemination Agent having received written notice of such event. For purposes of providing notice to the Disclosure Representative, the Dissemination Agent shall assume that the unscheduled draws described in clauses (iii) and (iv) reflect financial difficulty.

(c) Whenever the Borrower obtains knowledge of the occurrence of a potential Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of such event, determine if such event is in fact a Material Event that is required by the Rule to be disclosed and provide the Dissemination Agent with notice and instructions pursuant to subsections (d) or (e) below, as applicable.

(d) If the Borrower has determined that a Material Event is required to be disclosed, then the Borrower shall prepare a written notice describing the Material Event and provide the same to the Dissemination Agent along with instructions to file the same pursuant to subsection (f) below.

(e) If the Borrower determines that an event is not required to be disclosed as a Material Event then the Borrower shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been provided with a written notice describing a Material Event pursuant to subsection (c) of this Section or otherwise, and is instructed by the Borrower to report the occurrence of such Material Event, the Dissemination Agent shall, within two (2) Business Days of its receipt of such written notice and in any event no more than ten (10) Business Days after the occurrence of the Material Event, file the notice with the MSRB and send a copy to the Borrower. The foregoing notwithstanding, notice of a Material Event described in subsections (a)(viii) and (ix) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Holders of affected Bonds pursuant to the Indenture.

**Section 6. Amendment; Waiver.** Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Continuing Disclosure Agreement (and the Trustee will agree to any amendment so requested by the Borrower) and any provision of this Continuing Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions described under paragraph (a) under “Provision of Annual Reports,” “Contents of Annual Reports” or paragraph (a) under “Reporting of Material Events,” it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of an Obligated Person with respect to the Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders or (ii)

does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Continuing Disclosure Agreement, the Borrower will describe such amendment in the next Annual Report and will include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Borrower. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change will be given in the same manner as for a Material Event under Section 5(f) hereof and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7. Default.** In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Continuing Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Holders of at least 25% aggregate principal amount of Outstanding Bonds, will), or the Borrower or any Holder or Beneficial Borrower of the Bonds may, take such actions as may be necessary and appropriate, including seeking, or specific performance by court order, to cause the Borrower or the Dissemination Agent, as the case may be, to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement will not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Continuing Disclosure Agreement will be an action to compel performance.

**Section 8. Beneficiaries.** This Continuing Disclosure Agreement will inure solely to the benefit of the Borrower, the Trustee, the Dissemination Agent, the Participating Underwriter and Holders from time to time of the Bonds and will create no rights in any other Person or entity.

**Section 9. Additional Information.** Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Borrower shall have no obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

**Section 10. Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** Article VII of the Indenture is hereby made applicable to this Continuing Disclosure Agreement as if this Continuing Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Dissemination Agent shall be entitled to the same protections, limitations from liability and indemnities afforded the Trustee thereunder. The Dissemination Agent and the Trustee shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement, and the Borrower agrees to indemnify and save the Dissemination Agent, the Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their rights, obligations, powers and duties hereunder, including the costs and expenses (including reasonable attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or Trustee's respective negligence or willful misconduct. The

obligations of the Borrower under this Section shall survive the termination of this Continuing Disclosure Agreement, the resignation or removal of the Dissemination Agent or the Trustee and payment of the Bonds. The Dissemination Agent and the Trustee shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the Borrower, the Holders, or any other party. Neither the Trustee or the Dissemination Agent shall have any liability to the Holders or any other party for any monetary damages or financial liability of any kind whatsoever related to or arising from the breach of this Continuing Disclosure Agreement.

The Dissemination Agent agrees to disseminate the information provided to it hereunder in the form delivered by the Borrower. The Dissemination Agent is acting hereunder solely in an agency capacity and as such is merely a conduit for the Borrower, and shall have no liability or responsibility for the form, content, accuracy or completeness of any information furnished hereunder. Any such information may contain a legend to that effect.

The Dissemination Agent shall have no obligation to make disclosure concerning the Bonds, the Project or any other matter except as expressly set out herein, provided that no provision of this Continuing Disclosure Agreement shall limit the duties, trusts, rights, powers or obligations of the Trustee under the Indenture. The fact that the Trustee has or may have any banking, fiduciary or other relationship with the Borrower or any other party in connection with the Project or otherwise, apart from the relationship created by the Indenture and this Continuing Disclosure Agreement, shall not be construed to mean that the Trustee has knowledge or notice of any event or condition relating to the Bonds or the Project except in its respective capacities under such agreements.

No provision of this Continuing Disclosure Agreement shall require or be construed to require the Borrower or the Dissemination Agent to interpret or provide an opinion concerning any information disclosed hereunder.

The Annual Report may contain such disclaimer language as the Borrower may deem appropriate. Any information disclosed hereunder by the Dissemination Agent may contain such disclaimer language as the Dissemination Agent may deem appropriate.

The Borrower hereby agrees to compensate the Dissemination Agent for the services provided and the expenses incurred pursuant to this Continuing Disclosure Agreement, in an amount to be agreed upon from time to time hereunder, and to reimburse the Dissemination Agent upon its request for all reasonable expenses, disbursements and advances incurred by the Dissemination Agent hereunder (including any reasonable compensation and expenses of counsel) except any such expense, disbursement or advance that may be attributable to its negligence or willful misconduct.

The Dissemination Agent may consult with counsel of its choice and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon, it being understood that for purposes of this provision, that such counsel may be counsel to the Borrower.

No provision of this Continuing Disclosure Agreement shall require the Dissemination Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

**Section 11. Notices.** Any notices or communications to or among any of the parties to this Continuing Disclosure Agreement may be given at the addresses set forth in the Indenture. Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices of communications should be sent, effective only upon receipt.

**Section 12. Governing Law.** This Continuing Disclosure Agreement shall be governed by the laws of the State of California.

**Section 13. Termination of this Continuing Disclosure Agreement.** The Borrower or the Dissemination Agent may terminate this Continuing Disclosure Agreement by giving written notice to the other party at least 30 days prior to such termination. The Dissemination Agent shall be fully discharged at the time any such termination is effective. Also, this Continuing Disclosure Agreement shall terminate automatically upon payment or provision for payment of the Bonds.

**Section 14. Counterparts.** This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Left Blank Intentionally]

[Borrower's Signature Page to Continuing Disclosure Agreement]

**KIKU GARDENS HOUSING PARTNERS, LP**

By: Hearthstone Housing Foundation,  
its managing general partner

By: \_\_\_\_\_  
Name: Velma de la Rosa  
Title: Authorized Signatory

[Counterpart Signature Page to Continuing Disclosure Agreement]

**U.S. BANK NATIONAL ASSOCIATION**, as Dissemination  
Agent and Trustee

By: \_\_\_\_\_  
Name: Alicia Estrada  
Title: Senior Vice President

**EXHIBIT A**  
**ANNUAL REPORT**

\$ \_\_\_\_\_  
Chula Vista Housing Authority  
Multifamily Housing Revenue Bonds  
(Garden Villas) Series 2014A

Report for Period Ending \_\_\_\_\_

**THE PROJECT**

Name: Garden Villas  
Address: \_\_\_\_\_  
Occupancy \_\_\_\_\_  
Number of Units \_\_\_\_\_  
Number of Units Occupied as of Report Date \_\_\_\_\_

**OPERATING HISTORY OF THE PROJECT**

The following table sets forth a summary of the operating results of the Project for fiscal year ended \_\_\_\_\_, as derived from the Borrower's [un]audited financial statements.

Revenues  
Operating Expenses<sup>1</sup>  
Net Operating Income  
Debt Service on the Loan  
Net Operating Income/(Loss)  
After Debt Service

The average occupancy of the Project for the fiscal year ended \_\_\_\_\_, \_\_\_\_\_ was \_\_\_\_%.

<sup>1</sup>Excludes depreciation and other non-cash expenses, includes management fee.



**EXHIBIT B**

**NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF  
FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Chula Vista Housing Authority  
Name of Bond Issue: \$\_\_\_\_\_ Chula Vista Housing Authority Multifamily Housing Revenue  
Bonds (Garden Villas) Series 2014A  
Name of Borrower: Kiku Gardens Housing Partners, LP, a California limited partnership  
Date of Issuance: June \_\_, 2014

NOTICE IS HEREBY GIVEN that the above-referenced borrower (the "Borrower") has not provided an Annual Report in connection with the above-named bonds (the "Bonds") as required by a Trust Indenture, dated as of June 1, 2014 (the "Indenture"), between the above-named Issuer (the "Issuer") and U.S. Bank National Association, as trustee (the "Trustee"). The undersigned has been informed by the Borrower that it anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated:

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Name: Alicia Estrada  
Title: Senior Vice President

cc: Kiku Gardens Housing Partners, LP