

MASTER AGENCY AGREEMENT

between

**HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO,
as Issuer**

and

**BANK OF AMERICA, N.A.,
as Agent**

Dated as of [____], 2019

Relating to:

**[\$____]
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
MULTIFAMILY HOUSING REVENUE BONDS
(ARROWHEAD GROVE APARTMENTS PHASE II)
2019 SERIES A-1**

and

**[\$____]
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
MULTIFAMILY HOUSING REVENUE BONDS
(ARROWHEAD GROVE APARTMENTS PHASE II)
2019 SERIES A-2**

Table of Contents

	Page
Section 1. Appointment of Agent	2
Section 2. Representations of the Issuer and the Agent.	2
Section 3. Authority and Agreements of the Agent	2
Section 4. Agent as Independent Contractor	3
Section 5. Standard of Performance	3
Section 6. Successor Agent	3
Section 7. Termination by Agent	3
Section 8. Obligations of Agent in the Event of Termination	4
Section 9. Term of Agreement	4
Section 10. Governing Law; Venue; Severability; Captions; Definitions	4
Section 11. Appointment of Paying Agent	4
Section 12. Regulatory Agreement Fees	5
Section 13. Notices	5
Section 14. Consent to Assignment	6
Section 15. Execution in Counterparts	6

MASTER AGENCY AGREEMENT

This MASTER AGENCY AGREEMENT, dated as of July __, 2019 (this “**Agreement**”), between the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body corporate and politic, duly organized and validly existing under the Constitution and the laws of the State of California (the “**Issuer**”), and BANK OF AMERICA, N.A. (the “**Agent**”):

WITNESSETH:

WHEREAS, Chapter 1 of Part 2 of Division 31 of the Health and Safety Code of the State of California, as amended (the “**Act**”) authorizes the Issuer to issue revenue bonds to finance the acquisition, construction/rehabilitation and development of multifamily rental housing projects to be occupied in whole or in part by persons of low income and very low income and to dedicate the revenue from such projects to the repayment of such bonds and to take such action and do all things that may be necessary or appropriate to carry out the powers and duties specifically granted to the Issuer by the Act; and

WHEREAS, the Issuer is authorized by the Act to make loans to any person, firm, partnership or corporation licensed to do business in the State of California (the “**State**”) in furtherance of the purposes and activities stated in the Act; and

WHEREAS, the Issuer has determined to engage in a program of financing the acquisition, construction, rehabilitation and development of multifamily rental housing projects pursuant to the Act to benefit persons of low income and very low income, and has determined to borrow funds for such purpose by the issuance of revenue bonds authorized by the Act and to dedicate the revenue from said program to the repayment of said bonds; and

WHEREAS, in order to raise money to provide financing to Waterman Gardens Partners 2, L.P., a California limited partnership (the “**Borrower**”), for the acquisition, construction and equipping of a multifamily rental housing development consisting of 184 units in 18 buildings, to be located west of Crestview Avenue between Baseline Street and Olive Street, in the City of San Bernardino, California (the “**Project**”), the Issuer has determined to issue its [\$_____] principal amount of Housing Authority of the County of San Bernardino Multifamily Housing Revenue Bonds (Arrowhead Grove Apartments Phase II) 2019 Series A-1 and its [\$_____] principal amount of Housing Authority of the County of San Bernardino Multifamily Housing Revenue Bonds (Arrowhead Grove Apartments Phase II) 2019 Series A-2 (the “**Bonds**”), secured by a Master Pledge and Assignment dated the date hereof (the “**Pledge and Assignment**”), among the Issuer, the Agent and Bank of America, N.A., and its successors in interest, as holder of the Bonds (the “**Holder**”); and

WHEREAS, it is necessary and desirable for the Issuer and the Agent to enter into this Agreement to provide for the appointment and duties of the Agent; and

WHEREAS, under the Pledge and Assignment the proceeds of the Bonds will be advanced by the Holder on the same basis upon which the advance is made to the Borrower by the Agent to acquire, construct and develop the Project; and

WHEREAS, all conditions, things and acts required by the Act, and by all other laws of the State of California to exist, to have happened and to have been performed as a condition precedent to and in connection with the issuance of the Bonds exist, have happened, and have been performed in due time, form and manner as required by law, and the Issuer is now duly authorized and empowered, pursuant to each and every requirement of law, to issue the Bonds for the purpose, in the manner and upon the terms therein provided; and

WHEREAS, it is necessary and desirable for the Issuer and the Agent to enter into this Agreement to provide for the appointment and duties of the Agent;

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

Section 1. Appointment of Agent. The Issuer hereby irrevocably appoints the Agent as its agent with full authority and power to act on its behalf for the purposes set forth herein and to do all other acts necessary or incidental to the performance and execution thereof. The appointment provided for in this Section 1 is coupled with an interest and is irrevocable, except as expressly set forth herein.

Section 2. Representations of the Issuer and the Agent.

(a) The Issuer represents and warrants to the Agent that the Issuer is a public body corporate and politic, duly organized and existing under the Constitution and the laws of the State of California, with full power and authority to issue the Bonds and to enter into the transactions contemplated by this Agreement, the Bonds and the Pledge and Assignment.

(b) The Agent represents and warrants to the Issuer that the Agent is a national banking association duly organized and validly existing under the laws of the United States of America with full power and authority to enter into the transactions contemplated by this Agreement and the Pledge and Assignment and to serve as the agent of the Issuer for the purpose of making the Loan (as that term is defined in the Pledge and Assignment) to the Borrower as provided in the Loan Documents (as that term is defined in the Pledge and Assignment).

Section 3. Authority and Agreements of the Agent. The Agent is authorized and agrees to enter into, execute and deliver the Pledge and Assignment, on its own behalf, and the Loan Documents as agent for the Issuer and, pursuant to the terms thereof, advance moneys on behalf of the Issuer to fund the Loan upon satisfaction of the conditions set forth therein and otherwise to act on behalf of the Issuer as provided therein. The Agent is hereby authorized, directed and empowered to exercise all of the rights, powers and remedies of the Issuer under the Loan Agreement (as that term is defined in the Pledge and Assignment) and the other Loan Documents, and to make all determinations and exercise all options and elections thereunder, without the necessity of further advice to or consultation with, or consent or authorization by, the Issuer, and all actions taken by the Agent under the Loan Agreement or any of the other Loan Documents shall be as valid, and shall have the same force and effect, as if taken by the Issuer. The Agent agrees to provide the Issuer, from time to time upon the Issuer's request, with copies of any policies of insurance provided by the Borrower under the Loan Documents that are required to name the Issuer as an additional insured, and shall also provide, without any request

of the Issuer, any notices given by it or delivered to it pursuant to the Loan Agreement regarding the acceleration of the Loan or the foreclosure of the Mortgage (as that term is defined in the Pledge and Assignment). The responsibilities and duties of the Agent set forth in this paragraph may be delegated to the extent permitted by Section 11 hereof.

Section 4. Agent as Independent Contractor. Except as otherwise expressly set forth herein, in the performance of its duties as Agent hereunder, the Agent is an independent contractor acting in its own behalf and for its own account and without authority, express or implied, to act for or on behalf of the Issuer in any capacity other than that as expressly provided herein and in no other respect. The Agent agrees to indemnify, hold harmless and defend the Issuer, its officers, contractors, consultants, directors and employees against all loss, costs, damages, expenses, suits, judgments, actions and liabilities of whatever nature (including, without limitation, attorneys' fees, litigation, arbitration and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from or arising out of or related to any unlawful, negligent or tortious act or omission on the part of the Agent under this Agreement.

Section 5. Standard of Performance. The Agent will perform its duties hereunder in accordance with Section 4.3 of the Pledge and Assignment.

Section 6. Successor Agent. Anything herein to the contrary notwithstanding, any corporation or association into which the Agent may be converted or merged or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any conversion, sale, merger, consolidation or transfer to which it is a party will, ipso facto, be and become successor Agent hereunder and vested with all of the title to the whole property and all the powers, discretion, immunities, privileges, obligations and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of the parties hereto. If JPMorgan Chase Bank, N.A., a national banking association ("JPMC"), shall purchase all of the outstanding Bonds, JPMC shall, immediately upon such purchase, be and become successor Agent hereunder and shall be vested with all of the title to all of the Collateral (as that term is defined in the Pledge and Assignment) and all the powers, discretion, immunities, privileges, obligations and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of the parties hereto.

Section 7. Termination by Agent. Neither the Issuer nor the Agent may terminate this agreement so long as Agent or any Affiliate (as that term is defined in the Pledge and Assignment) of the Agent is the Holder of the Bonds. In the event the Bonds are sold, assigned, transferred or otherwise disposed of in accordance with the provisions of Sections 2.8 and 9.5 of the Pledge and Assignment, other than to an Affiliate of the Agent or JPMC, either the Issuer or the Agent may terminate this Agreement upon the terms hereinafter provided in this Section 7 by giving thirty (30) days' written notice to the other party, the Borrower, and the Holder. Such termination shall take effect, except as to the duties of the Agent under Section 8 below, upon the appointment of a successor agent by the Issuer, as directed by the Holder or other owners of the Bonds with the consent, which shall not be unreasonably withheld, of the Issuer (such consent not being required if such Agent is the subsequent Holder of all of the Bonds or an Affiliate

thereof) and the execution, acknowledgment and delivery by the successor Agent of an instrument in substantially the form of this Agreement. If JPMC shall purchase the Loan and become the assignee of the rights of the lender under the Loan Documents and terminate the Pledge and Assignment, as provided in Section 10.7 of the Pledge and Assignment, the agency with the Agent created pursuant to this Agreement shall terminate immediately upon such purchase and assignment, without the need for any further act, deed or conveyance on the part of the parties hereto.

Section 8. Obligations of Agent in the Event of Termination. From and after the effective date of termination of this Agreement pursuant to Section 7 above, the Agent will be relieved of further responsibility in connection with the Pledge and Assignment and the Loan Documents. In the event of such termination, the Agent will pay over to the Issuer or, if the Issuer shall so direct, to any successor agent appointed by the Issuer, all moneys collected and held by it pursuant to this Agreement and/or pursuant to any other agreement, letter or arrangement relative to the Pledge and Assignment and the Loan Documents simultaneously with such termination, and turn over to the successor agent appointed by the Issuer, as provided above, all documents and records in connection with the Pledge and Assignment and the Loan Documents simultaneously with such termination. The Agent will deliver to the successor agent a full accounting, including a statement showing the monthly payments collected by it and a statement of moneys held in escrow by it for the payment of taxes, maintenance or other charges in respect of the Pledge and Assignment and the Loan Documents simultaneous with such termination. The Agent will execute and deliver to its successor, without recourse, representation or warranty of any kind, such instruments as are required to assign to the successor all its right, title and interest in all property of whatever nature which it holds as Agent of the Issuer. Where necessary, all such instruments must be filed and/or recorded in each office where such instruments are required to be filed and/or recorded. In addition, Agent shall provide to the Issuer an opinion of counsel to the Agent to the effect that all instruments necessary to transfer to the successor agent all property held by the Agent as Agent hereunder have been duly executed and delivered.

Section 9. Term of Agreement. Unless sooner terminated as herein provided, this Agreement will continue from the date hereof until payment in full of the Bonds.

Section 10. Governing Law; Venue; Severability; Captions; Definitions. This Agreement will be construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules of the State of California, and any action arising hereunder or under the Bonds shall be filed and maintained in the County of San Bernardino, California, unless the Issuer waives this requirement in writing. In the event any provision of this Agreement is held invalid by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof. Any headings or divisions of this Agreement are solely for convenience of reference and will neither constitute a part of this Agreement nor affect its meaning, construction or effect. All capitalized terms used but not defined herein shall have the meanings given in the Pledge and Assignment.

Section 11. Appointment of Paying Agent. The Issuer directs the Agent to appoint or cause to be appointed by the Borrower from time to time one or more Paying Agents to assist the Agent in administering the Loan. Bank of America, N.A., is hereby confirmed as the initial

appointed Paying Agent. Each such Paying Agent may perform any necessary function related to the administration of the Loan, including but not limited to collecting funds, invoicing for regularly scheduled debt payments and other amounts, collecting and holding reserves, taking and maintaining physical possession of the Note, being the mortgagee of record for the Loan, determining the conversion date, if applicable, and monitoring compliance with financial covenants related to the Loan and the property. To the extent permitted by the Pledge and Assignment, the Paying Agent may also act as registrar for the Bonds, take and maintain physical possession of the Bonds, and perform any or all obligations of the Agent with respect to the Book-Entry System as set forth in the Pledge and Assignment.

Section 12. Regulatory Agreement Fees. [The Agent acknowledges that the Borrower has an obligation to pay certain fees to the Issuer pursuant to the terms and conditions set forth in Section 7(g) of the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of [____], 2019, by and between the Issuer and the Borrower (the “**Regulatory Agreement**”), and in the event that any annual administration fees due and payable under the Regulatory Agreement are paid by the Borrower to the Agent, the Agent shall transfer such payments to the Issuer. In no event shall the Agent be liable to the Issuer for the failure of the Borrower to make the payments described in this Section 12.]

The Agent further acknowledges that in order to preserve the tax-exempt status of any series of Bonds, the Borrower must comply with requirements for rebate of excess investment earnings to the federal government to the extent applicable. The Agent agrees to use commercially reasonable efforts to send the Borrower a notification or reminder of its payment obligations under said Section 7(g) of the Regulatory Agreement and of the Borrower’s obligation to cause to be performed the rebate calculations and to rebate any excess earnings as and when required pursuant to the Tax Certificate. Notwithstanding the foregoing, the payment obligations shall be the sole responsibility of the Borrower and the Agent shall not be liable to the Issuer or the Borrower hereunder for the failure to so notify or remind the Borrower.

Section 13. Notices. Any notice provided for herein must be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered and postage prepaid, addressed as follows:

If to the Issuer: Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408
Attention: Chief Operating Officer/Senior Vice
President

or at such other address as the Issuer may have designated by Notice to the Agent and the Holder;

If to the Agent: Bank of America, N.A.
2000 Clayton Road, 6th Floor
Concord, CA 94520
Mail Code: CA4-704-06-06
Attention: Loan Administration Manager

With a copy to: Buchalter ~~P.C.~~, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500 |
Los Angeles, CA 90017-1730
Attention: Michael Williamson, Esq.
Facsimile: (213) 891-5203
Email: mwilliamson@buchalter.com
Matter No: [B0965-0428](#)

or at such other address as any of them may designate by notice duly given in accordance with this Section 13 to the others.

Section 14. Consent to Assignment. The Issuer agrees that Agent shall have the right to assign all of its rights under this Agreement, and under all instruments and documents executed by it as Agent of the Issuer pursuant to this Agreement, to an Affiliate of Agent, or to a subsequent Holder of all of the Bonds or an Affiliate thereof. The Issuer will execute and deliver to the Agent any documents necessary to effectuate such assignment, and will not take any action to impair Agent's right to assign such rights pursuant to this Section 14.

Section 15. Execution in Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts. Each such counterpart will constitute an original but all of such counterparts taken together will constitute one agreement.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the Issuer and the Agent have each caused this Agreement to be executed in their respective names as of the date first above written.

Issuer

HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO

By: _____
Authorized Signatory

[Signatures continue on following page.]

Agent

BANK OF AMERICA, N.A.,
a national banking association

By: _____

Name: Michael Petty

Title: Vice President

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