

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Buchalter, A Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017  
Attention: Scott Salomon, Esq.

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**SUBORDINATION AGREEMENT  
(Bond Loan / Authority Loan)**

This SUBORDINATION AGREEMENT (this “**Agreement**”), dated as of [\_\_\_\_\_, 2019], is executed by and among (i) BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, “**Senior Lender**”), (ii) HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body corporate and politic organized under the laws of California (“**Subordinate Lender**”), and (iii) WATERMAN GARDENS PARTNERS 2, L.P., a California limited partnership (“**Borrower**”).

**RECITALS:**

A. Borrower, as lessee and the Housing Authority of the County of San Bernardino (the “**Authority**”), as lessor, have entered into that certain Ground Lease dated as of on or about the date hereof (as the same may be amended or replaced pursuant to its terms, the “**Ground Lease**”). Pursuant to the Ground Lease, Borrower owns a leasehold interest in and to that certain real estate more particularly described on Exhibit “A” (“**Land**”) and a fee estate in and to all improvements now or hereafter located thereon (the “**Improvements**”). The Borrower’s leasehold interest in and to the Land and its fee interest in and to the Improvements are collectively referred to herein as the “**Mortgaged Property**”).

B. Reference is made to those certain \$[\_\_\_\_\_] Multifamily Housing Revenue Bonds (Arrowhead Grove Apartments Phase 2), Series [\_\_\_\_\_] and the \$[\_\_\_\_\_] Multifamily Housing Revenue Bonds (Arrowhead Grove Apartments Phase 2), Series [\_\_\_\_\_] (collectively, the “**Bonds**”). The Bonds are to be issued under that certain Master Pledge and Assignment dated on or about the date hereof (the “**Master Pledge**”) executed by and between the Housing Authority of the County of San Bernardino (the “**Issuer**”) and Senior Lender, in its capacity as Holder and Agent. Pursuant to that certain Construction Disbursement Agreement dated as of even date herewith (“**Senior Loan Agreement**”) executed by and between Borrower and Senior Lender, Senior Lender has agreed to make a tax exempt construction loan to the Borrower in the aggregate original principal amount of \$[\_\_\_\_\_] (the “**Senior Loan**”). The Senior Loan is or will be secured by a first mortgage lien (the “**Senior Mortgage**”) on the Mortgaged Property, which is being recorded concurrently herewith in the Official Records of the County of San Bernardino (“**Official Records**”). The Borrower’s obligation to repay the Senior Loan is evidenced by a \$[\_\_\_\_\_] Promissory Note and a \$[\_\_\_\_\_] Promissory Note,

each dated as of even date herewith (collectively, the “**Senior Note**”). In connection with the Bonds, Borrower and Issuer have executed that certain Regulatory Agreement and Declaration of Restrictive Covenants (the “**Senior Regulatory Agreement**”), dated on or about the date hereof, to be recorded concurrently herewith in the Official Records.

C. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make a subordinate loan to Borrower in the aggregate original principal amount of \$[4,382,000] (the “**Subordinate Loan**”) and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Mortgaged Property.

D. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property and record one or more regulatory agreements or restrictive covenants against the Mortgaged Property in connection with the Subordinate Loan, subject to all of the conditions contained in this Agreement.

E. Upon the timely satisfaction of the “Conditions to Conversion” set forth in that certain Bond Purchase Agreement (the “**Bond Purchase Agreement**”) dated as of even date herewith by and among Borrower, Senior Lender and JPMorgan Chase Bank, N.A., a national banking association (“**Chase**”), Chase has agreed to purchase a portion of the Bonds from Senior Lienholder for a purchase price in the maximum amount of \$[\_\_\_\_\_] (the “**Permanent Loan**”). Upon Chase’s purchase of the Bonds, that certain Permanent Loan Agreement dated as of the date hereof (the “**Permanent Loan Agreement**”) by and between Borrower and Chase shall be in effect and shall replace the Senior Loan Agreement. From and after the Conversion Date (as defined in the Loan Purchase Agreement), to the extent that any of the terms and provisions of the Permanent Loan Agreement cover the same subject matter as any other surviving Loan Document, the terms and provisions of the Permanent Loan Agreement shall be deemed to amend and restate, in their entirety, the terms and provisions of such Loan Document relating to such subject matter. The Permanent Loan Agreement and all documents executed in connection with the Permanent Loan are referred to herein as the “**Permanent Loan Documents**”. Effective as of the Conversion Date and Chase’s purchase of the Bonds, any reference herein to the “Senior Loan Agreement” shall mean the Permanent Loan Agreement, and any reference herein to the “Senior Loan Documents” shall include the Permanent Loan Documents.

### **AGREEMENTS:**

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

#### **1. Recitals.**

The recitals set forth above are incorporated herein by reference.

## 2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

**“Affiliate”** means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

**“Borrower”** means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

**“Business Day”** means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender or Subordinate Lender are not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

**“Condemnation Action”** means any action or proceeding or threatened action or proceeding, however characterized or named, relating to any condemnation or other exercise of eminent domain or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

**“Control”** (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

**“Default Notice”** means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

**“Person”** means an individual, an estate, a trust, a corporation, a partnership, a limited liability company, a limited liability partnership, governmental department or agency or any other organization or entity (whether governmental or private) which has the legal capacity to own property.

**“Senior Lender”** means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement; provided, however, that from and after the

Conversion Date, Chase (and its successors and assigns and any other Person who becomes the legal holder of the Senior Loan) shall become the Senior Lender hereunder.

**“Senior Loan Default”** means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

**“Senior Loan Documents”** means the Senior Mortgage, the Senior Note, the Senior Loan Agreement, the Senior Regulatory Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement provided, however, that from and after the Conversion Date, the Senior Loan Documents shall include the Permanent Loan Documents.

**“Subordinate Lender”** means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

**“Subordinate Loan Agreement”** means that certain Development Loan Agreement dated on or about the date hereof by and between Borrower and Subordinate Lender.

**“Subordinate Loan Default”** means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

**“Subordinate Loan Documents”** means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan; provided, however, the Unsubordinated Regulatory Agreement is not a Subordinate Loan Document.

**“Subordinate Mortgage”** means, collectively, that certain Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (Authority Development Loan), and that certain Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (Authority Ground Lease Loan), each encumbering the Mortgaged Property as security for the Subordinate Loan, each of which Subordinate Lender will cause to be recorded in the Official Records substantially concurrently herewith.

**“Subordinate Note”** means, collectively, that certain Promissory Note dated on or about the date hereof in the original principal amount of \$3,412,000, and that certain Promissory Note dated on or about the date hereof in the original principal amount of \$970,000, each issued by Borrower to Subordinate Lender to evidence the Subordinate Loan.

**“Unsubordinated Regulatory Agreement”** means that certain Regulatory Agreement and Declaration of Restrictive Covenants by and between the Subordinate Lender and Borrower, which Subordinate Lender will cause to be recorded in the Official Records substantially concurrently herewith.

### **3. Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage, the Unsubordinated Regulatory Agreement, and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

### **4. Borrower's and Subordinate Lender's Representations and Warranties.**

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

#### **(a) Subordinate Loan Documents.**

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, the Subordinate Loan Agreement and the Unsubordinated Regulatory Agreement.

#### **(b) [Reserved].**

#### **(c) Relationship of Borrower to Subordinate Lender and Senior Lender.**

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

#### **(d) Term.**

The term of the Subordinate Note does not end before the stated term of the Senior Note.

#### **(e) Subordinate Loan Documents.**

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**5. [Reserved].**

**6. Terms of Subordination.**

**(a) Agreement to Subordinate.**

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Mortgage, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

**(b) Subordination of Subrogation Rights.**

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

**(c) Payments Before Senior Loan Default.**

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

**(d) Payments After Senior Loan Default.**

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's

prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.**

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Notice of Payment from Other Persons.**

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

**(g) Agreement Not to Commence Bankruptcy Proceeding.**

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

**7. Default Under Subordinate Loan Documents.**

**(a) Notice of Subordinate Loan Default and Cure Rights.**

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower.

Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default or default under the Unsubordinated Regulatory Agreement within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents and the Unsubordinated Regulatory Agreement. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default or a default under the Unsubordinated Regulatory Agreement shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Mortgage.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.**

If a Subordinate Loan Default or a default under the Unsubordinated Regulatory Agreement occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents, or exercise or pursue its right to acceleration of the Subordinate Loan (and enforcement of any "due on sale" provision included in the Subordinate Loan Documents), collection of rents, appointment (or seeking the appointment of) a receiver, unless and until it has given Senior Lender at least sixty (60) days prior written notice; during such sixty (60) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other non-monetary rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and the Unsubordinated Regulatory Agreement, including, without limitation, an action for specific performance to enforce the covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Unsubordinated Regulatory Agreement.

**(c) Cross Default.**

Borrower and Subordinate Lender agree that a Subordinate Loan Default or a default under the Unsubordinated Regulatory Agreement shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default or default under the Unsubordinated Regulatory Agreement of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default or default under the Unsubordinated Regulatory Agreement shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.



## **8. Default Under Senior Loan Documents.**

### **(a) Notice of Senior Loan Default and Cure Rights.**

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Loan Agreement and the Subordinate Mortgage.

### **(b) Cross Default.**

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement (if no other default has occurred under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

## **9. Conflict.**

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents, the Unsubordinated Regulatory Agreement and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents, the Subordinate Loan Documents, or the Unsubordinated Regulatory Agreement, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default or default under the Unsubordinated Regulatory Agreement, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default or default under the Unsubordinated Regulatory Agreement, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

## **10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents and the Unsubordinated Regulatory Agreement covering the same subject matter:

### **(a) Protection of Security Interest.**

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents or the Unsubordinated Regulatory Agreement.

### **(b) Condemnation or Casualty.**

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "**Casualty**"), at any time or times when the Senior Mortgage remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents, the Unsubordinated Regulatory Agreement or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender pursuant to the terms of the Senior Loan Documents; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

**(c) Insurance.**

Subordinate Lender agrees that the Senior Mortgage shall have a priority of payment of the proceeds of property damage insurance under the Senior Mortgage. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

**(d) No Modification of Subordinate Loan Documents.**

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise materially amend the Subordinate Loan terms or terms of the Unsubordinated Regulatory

Agreement in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents, the Unsubordinated Regulatory Agreement or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

#### **11. Modification or Refinancing of Senior Loan.**

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided such agreement or arrangement does not increase the amount of the Senior Loan (other than in connection with protective advances under the Senior Loan), increase the required payments due under the Senior Loan, decrease the term of the Senior Loan, or increase the interest rate on the Senior Loan. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to the Permanent Loan Documents and any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of a new mortgage debt, if requested, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement, provided such other new mortgage debt does not result in indebtedness greater than the maximum principal amount of the Senior Mortgage Loan Documents; and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of the Permanent Loan and any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Mortgage, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note, and the Permanent Note, the Permanent Loan Agreement and the balance of the Permanent Loan Documents. Following the Conversion Date, all the terms and covenants of this Agreement shall inure to the benefit of Chase or any other holder of the Senior Loan.

#### **12. Default by Subordinate Lender or Senior Lender.**

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

#### **13. Reinstatement.**

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made

to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

#### **14. Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) which the any party is required or permitted to give to another party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

**SENIOR LENDER (Prior to Conversion):**

Bank of America, N.A.  
Community Development Banking  
CA4-704-06-06  
2000 Clayton Road, Building D, 6<sup>th</sup> Floor  
Concord, CA 94520  
Attention: Loan Administration Manager

**BORROWER:**

Waterman Gardens Partners 2, L.P.,  
c/o National CORE  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn.: Chief Financial Officer

With copy to:

Waterman Gardens Partners 2, L.P.,  
c/o National CORE  
9421 Haven Avenue  
Rancho Cucamonga, CA 91730  
Attn.: General Counsel

**SENIOR LENDER (After Conversion):**

JPMorgan Chase Bank, N.A.  
560 Mission Street, Floor 03  
San Francisco, CA 94105  
Attention: James Vossoughi

**SUBORDINATE LENDER:**

Housing Authority of the County of San  
Bernardino  
715 East Brier Drive  
San Bernardino, CA 92408-2841  
Attn: Executive Director

Any party may, by notice given pursuant to this Section, change the person or persons

and/or addresses or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Each party hereto agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by another party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

## **15. General.**

### **(a) Assignment/Successors.**

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

### **(b) No Partnership or Joint Venture.**

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

### **(c) Senior Lender's and Subordinate Lender's Consent.**

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its reasonable discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its reasonable discretion, unless otherwise expressly provided in this Agreement.

### **(d) Further Assurances.**

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

### **(e) Amendment.**

This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.**

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.**

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.**

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

**(i) Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one (1) and the same instrument.

**(j) Sale of Senior Loan.**

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

Notwithstanding anything to the contrary herein, the Senior Lender must notify the Subordinate Lender in writing after any transfers of the Senior Loan or any partial interest in the Senior Loan.

**[Remainder of Page Intentionally Blank]**



**IN WITNESS WHEREOF**, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**SENIOR LENDER:**

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

By: \_\_\_\_\_  
Name: Michael K. Petty  
Title: Senior Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
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State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me \_\_\_\_\_, (insert name and title of the officer) Notary Public, personally appeared Michael K. Petty, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature \_\_\_\_\_

**IN WITNESS WHEREOF**, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**SUBORDINATE LENDER:**

**HOUSING AUTHORITY OF THE COUNTY  
OF SAN BERNARDINO,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Name: Maria Razo  
Title: Executive Director

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me \_\_\_\_\_, (insert name and title of the officer) Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature \_\_\_\_\_

**IN WITNESS WHEREOF**, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**WATERMAN GARDENS PARTNERS 2, L.P.,**  
a California limited partnership

By: WG Partners 2 MGP, LLC,  
a California limited liability company,  
its general partner

By: National Community Renaissance of California,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: Michael Finn  
Title: Chief Financial Officer

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
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State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me \_\_\_\_\_, (insert name and title of the officer) Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature \_\_\_\_\_

**Exhibit A**  
**Legal Description**

[to be inserted]