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**FUNDING LOAN AGREEMENT**

**by and between**

**BAYPOINT FAMILY APARTMENTS, LLC**

**and the**

**COUNTY OF CONTRA COSTA, CALIFORNIA**

**dated as of November 1, 2018**

**relating to:  
\$3,500,000  
County of Contra Costa, California  
Multifamily Housing Revenue Note  
(Baypoint Family Apartments) Series 2018B-2**

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT, dated as of November 1, 2018 (the "Funding Loan Agreement"), is by and between BAYPOINT FAMILY APARTMENTS, LLC, a California limited liability company ("Baypoint"), and the COUNTY OF CONTRA COSTA, CALIFORNIA, a public body, corporate and politic, duly organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations hereunder, the "Governmental Lender").

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following words and terms as used in this Agreement shall have the following meanings unless the context or use otherwise requires:

"Act" means Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented to apply to obligations incurred as of the Closing Date.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

"Approved Institutional Buyer" means (a) a "qualified institutional buyer" as defined in Rule 144A promulgated under the United States Securities Act of 1933, as in effect on the date hereof (the "Securities Act"); (b) an "accredited investor" as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (c) an entity that is directly or indirectly wholly owned or controlled by Baypoint; (d) an entity all of the investors in which are described in (a), (b) or (c) above; or (e) a custodian or trustee for a party described in (a), (b) or (c) above.

"Assignment Agreement" means that certain Assignment Agreement, dated as of November 1, 2018, executed by Governmental Lender in favor of Baypoint.

"Baypoint" means Baypoint Family Apartments, LLC, a California limited partnership, and its successors and assigns.

"Borrower" means Baypoint Family Apartments, L.P., a California limited partnership, and its successors and assigns under the Borrower Loan Documents and the Regulatory Agreement.

"Borrower Loan" means the loan made by the Governmental Lender to the Borrower pursuant to the terms of the Borrower Loan Agreement and evidenced by the Borrower Note.

"Borrower Loan Agreement" means that certain Borrower Loan Agreement, dated as of November 1, 2018, by and among the Borrower, the Governmental Lender and Baypoint, as amended and supplemented from time to time, pursuant to which the Borrower Loan is being made.

“Borrower Loan Documents” has the meaning given to it in Recital D to the Borrower Loan Agreement.

“Borrower Note” means that certain Promissory Note, dated November \_\_, 2018, in the initial principal amount of \$3,500,000, evidencing the Borrower Loan.

“Borrower Representative” means the Vice President of the administrative general partner of the Borrower, the President of the managing general partner of the Borrower, or any other person designated by action of the Borrower to be a Borrower Representative for purposes of the Borrower Loan Documents, a copy of which designation shall be delivered by the Borrower to Baypoint and the Governmental Lender.

“Closing Date” means November \_\_, 2018, being the date of issuance of the Funding Loan Note for purposes of the Code.

“Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Funding Loan Note and (except as otherwise referenced herein) as it may be amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“County” means the County of Contra Costa, California.

“Deed of Trust” means the Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing, made as of November 1, 2018, executed by the Borrower, as trustor, and granting a security interest in the Project to the deed of trust trustee identified therein for the benefit of the Governmental Lender to secure the Borrower’s obligations under the Borrower Note to repay the Borrower Loan, and all obligations related thereto under the Borrower Loan Agreement.

“Event of Default” means any of the events described as an event of default in Section 9.1 hereof.

“Funding Loan” means the loan originated hereunder by Baypoint to the Governmental Lender evidenced by the Funding Loan Note, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of the Borrower Loan Agreement.

“Funding Loan Agreement” means this Funding Loan Agreement, as amended and supplemented from time to time.

“Funding Loan Documents” means this Funding Loan Agreement, the Funding Loan Note, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Assignment Agreement.

“Funding Loan Note” means the promissory note executed by the Governmental Lender in favor of Baypoint, in the initial principal amount of \$3,500,000 evidencing the Funding Loan, in the form attached hereto as Exhibit A.

“Governmental Lender” means the County of Contra Costa, California, and its successors and assigns.

“Governmental Lender Note” has the meaning given to such term in the Senior Bank Loan Agreement.

“Governmental Obligations” means, collectively, the Funding Loan Note and the Governmental Lender Note.

“Person” shall mean an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, a limited partnership, a trust, an unincorporated organization or a governmental body or any agency or political subdivision thereof.

“Project” means, collectively, the 193 units of multifamily rental housing (inclusive of two manager’s units), located in the Baypoint unincorporated area of the County, currently known as Baypoint Family Apartments, and including structures, buildings, fixtures or equipment, as it may at any time exist, and any structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities, and a fee interest in the site described in the Deed of Trust.

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

“Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of November 1, 2018, by and between the Governmental Lender and the Borrower, as it may be amended and supplemented from time to time in accordance with its terms.

“Reserved Rights” means the Governmental Lender’s rights to enforce and receive payments of money directly and for its own purposes under Sections 2.7 and 2.10 of the Borrower Loan Agreement, the Governmental Lender’s rights to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to enforce the Borrower’s covenants in the Regulatory Agreement and the Borrower’s covenants in the Borrower Loan Agreement to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Governmental Lender), the Governmental Lender’s right to receive notices and to grant or withhold consents or waivers under the Regulatory Agreement and this Funding Loan Agreement, its rights to indemnification by the Borrower under Section 2.10 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement, and its rights regarding amendments to this Funding Loan Agreement, the Regulatory Agreement, and to the provisions of the Borrower Loan Agreement in which it has Reserved Rights as described in this definition, all in accordance with the provisions hereof, of the Regulatory Agreement and of the Borrower Loan Agreement, respectively.

“Security” shall have the meaning ascribed to it in Section 7.1.

“Senior Bank Loan Agreement” means the Loan Agreement, dated as of November 1, 2018, between the Governmental Lender and Pacific Western Bank.

“Senior Borrower Loan” has the meaning given to the term “Borrower Loan” in the Senior Bank Loan Agreement.

“Senior Borrower Loan Agreement” has the meaning given to the term “Borrower Loan Agreement” in the Senior Bank Loan Agreement.

“State” means the State of California.

“Tax Certificate” means the Certificate as to Arbitrage of the Borrower and the Governmental Lender dated the Closing Date.

“Tax Counsel” means (a) Quint & Thimmig LLP, or (b) any attorney at law or other firm of attorneys selected by the Borrower and acceptable to the Governmental Lender and Baypoint of nationally recognized standing in matters pertaining to the federal tax status of interest on tax exempt obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not impair the exclusion of interest on the Funding Loan Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

1.2 Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Funding Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

1.3 Recitals, Titles and Headings. The terms and phrases used in the recitals of this Funding Loan Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all such terms and phrases for purposes of this Funding Loan Agreement shall be determined by references to Section 1.1 hereof. The titles and headings of the articles and sections of this Funding Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Funding Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the Governmental Lender. The Governmental Lender makes the following representations and warranties:

(a) The Governmental Lender is a public body, corporate and politic duly organized and existing under the laws of the State.

(b) Under the provisions of the Act, the Governmental Lender has the power, and has taken all official actions necessary (i) to enter into the Funding Loan Documents to which it is a party, or (ii) to perform its obligations hereunder and thereunder, and

(iii) to consummate all other transactions on its part contemplated by this Funding Loan Agreement.

(c) The Funding Loan Documents to which the Governmental Lender is a party have been duly executed and delivered by the Governmental Lender and the Governmental Lender has taken such actions as are necessary to cause the Funding Loan Documents to which it is a party, when executed by the other respective parties thereto, to be valid and binding limited obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally.

(d) The execution and delivery of Funding Loan Documents to which it is a party, the performance by the Governmental Lender of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby, will not violate any law, rule, regulation or ordinance or any order, judgment or decree of any federal, state or local court, and do not conflict with, or constitute a breach of, or a default under the terms and conditions of any agreement, instrument or commitment to which the Governmental Lender is a party or by which the Governmental Lender or any of its property is bound.

(e) The Governmental Lender has not been served with any action, suit, proceeding, inquiry or investigation or, to the knowledge of the Governmental Lender, no action, suit, proceeding, inquiry or investigation is threatened against the Governmental Lender by or before any court, governmental agency or public board or body which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the Board of Directors of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party, or the loaning of the Funding Loan as herein set forth; (iii) affects or questions the validity or enforceability of the Funding Loan Documents; or (iv) questions the power or authority of the Governmental Lender to carry out the transactions on its part contemplated by the Funding Loan Documents.

(f) The revenues and receipts to be derived from the Borrower Loan Agreement and the Borrower Note have not been pledged by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan evidenced by the Funding Loan Note.

(g) The Governmental Lender will not create, authorize or approve any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

Nothing in this Funding Loan Agreement shall be construed as requiring the Governmental Lender to provide any financing for the Project other than the proceeds of the Funding Loan, or to provide sufficient moneys for all of the costs of the Project.

2.2 Representations, Warranties and Covenants of Baypoint. Baypoint as of the date hereof, represents, warrants and covenants that:

(a) Baypoint is a limited liability company, organized and existing under the laws of the State and has full legal right, power and authority under the laws of the State



(i) to enter into this Funding Loan Agreement and the Borrower Loan Agreement, (ii) to perform its obligations hereunder and thereunder, and (iii) to consummate the transactions on its part contemplated by this Funding Loan Agreement and the Borrower Loan Agreement.

(b) This Funding Loan Agreement and the Borrower Loan Agreement have been duly executed and delivered by Baypoint and, when executed by the Governmental Lender and the Borrower, as applicable, will constitute valid and binding obligations of Baypoint, enforceable against Baypoint in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally.

(c) The execution and delivery of this Funding Loan Agreement and the Borrower Loan Agreement, the performance by Baypoint of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby will not violate any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which Baypoint is a party or by which Baypoint or any of its property is bound.

(d) Baypoint has not been served with and, to the knowledge of Baypoint, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against Baypoint which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Governmental Lender or the execution and delivery of this Funding Loan Agreement and the Borrower Loan Agreement, (ii) affects or questions the validity or enforceability of this Funding Loan Agreement or the Borrower Loan Agreement, or (iii) questions the power or authority of Baypoint to carry out the transactions on its part contemplated by, or to perform its obligations under, this Funding Loan Agreement and the Borrower Loan Agreement.

(e) Any certificate for the benefit of Governmental Lender signed by a representative of Baypoint and delivered pursuant to this Funding Loan Agreement or any of the other Funding Loan Documents shall be deemed a representation and warranty by Baypoint as to the statements made therein.

### ARTICLE III

#### THE FUNDING LOAN

3.1 Closing of the Funding Loan. The closing of the Funding Loan shall not occur until the following conditions are met:

(a) Baypoint shall have received an original executed counterpart of this Funding Loan Agreement, the Funding Loan Note, the original of the Borrower Note endorsed by the Governmental Lender without recourse to Baypoint, the Regulatory Agreement and the Borrower Loan Agreement;

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Funding Loan Agreement shall have occurred;

(c) the conditions to the closing of the Borrower Loan, the issuance of the Borrower Note and the disbursement of the Borrower Loan as set forth in Sections 1.1 and 1.2 of the Borrower Loan Agreement shall have been satisfied in full;

(d) counsel to the Borrower shall have delivered an opinion in form satisfactory to the Governmental Lender and Baypoint regarding the enforceability against the Borrower of those Borrower Loan Documents described in clause (a) above to which the Borrower is a party;

(e) Baypoint, as the initial owner of the Funding Loan Note shall have executed and delivered to the Governmental Lender a letter in the form of Exhibit B hereto;

(f) all legal matters incident to the transactions contemplated by this Funding Loan Agreement shall be concluded to the reasonable satisfaction of Tax Counsel, counsel to the Governmental Lender and counsel to Baypoint; and

(g) the Senior Bank Loan Agreement and the Senior Borrower Loan Agreement shall have been executed by the parties thereto and all conditions precedent to the issuance of the Governmental Lender Note and the initial funding of the Senior Borrower Loan contemplated thereby shall have been satisfied.

3.2 Commitment to Execute the Funding Loan Note. The Governmental Lender agrees to execute and deliver the Funding Loan Note simultaneously with the execution of this Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Note, the Tax Certificate and the Regulatory Agreement.

3.3 Amount of Funding Loan. Baypoint hereby makes to the Governmental Lender, and the Governmental Lender hereby accepts from Baypoint, upon the terms and conditions set forth herein, the Funding Loan in an aggregate principal amount of \$3,500,000.

3.4 Consideration for Funding Loan and Borrower Loan. The Governmental Lender and Baypoint acknowledge and agree that the amount of the Borrower Loan (and consequently the amount of the Funding Loan) shall serve as a credit against the acquisition price of the Project site by the Borrower from Baypoint. Given the foregoing, the total principal amount of the Borrower Loan (and consequently the total principal amount of the Funding Loan) shall be deemed to have been disbursed upon the transfer of title to the Project site on the Closing Date from Baypoint to the Borrower.

## ARTICLE IV

### LIMITED LIABILITY; NOTE REGISTER

4.1 Limited Liability. All obligations and any liability of the Governmental Lender hereunder, under the Funding Loan Note, under the other Funding Loan Documents and under the Borrower Loan Documents shall be limited, special obligations of the Governmental Lender, payable solely and only from amounts received from the Borrower under the Borrower Loan Agreement, the Borrower Note and the other Borrower Loan Documents, as further described in Article V hereof. Neither the Governmental Lender nor the State or any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Funding Loan or to satisfy any other monetary obligations of the Governmental Lender under the Funding Loan Documents, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment. The repayment of the Funding Loan is not secured by a pledge

of the faith and credit of the Governmental Lender or the State or any of its political subdivisions nor does the Funding Loan constitute indebtedness within the meaning of any constitutional or statutory debt limitation.

4.2 Note Register. The Funding Loan Note shall be in fully registered form. Baypoint shall maintain records (the "Note Register") as to the owner of the Funding Loan Note. Any transfer by Baypoint of its ownership of the Funding Loan Note (or by any subsequent transferee of the Funding Loan Note) shall be recorded by Baypoint in the Note Register.

#### 4.3 Transfers of Funding Loan Note.

(a) The Funding Loan Note and the Funding Loan may, in accordance with the terms of this Funding Loan Agreement but in any event subject to the provisions of Section 4.3(b), (c) and (d) hereof, be transferred by the Person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of the Funding Loan Note for cancellation at the office of the Governmental Lender, accompanied by a written instrument of transfer in a form acceptable to the Governmental Lender, duly executed. Whenever the Funding Loan Note shall be surrendered for transfer, the Governmental Lender shall execute and deliver to the transferee thereof a new Funding Loan Note in the name of the transferee as beneficiary thereof, and the Governmental Lender shall advise Baypoint of the transfer for purposes of Section 4.2.

(b) Notwithstanding any other provision hereof, the Funding Loan Note may not be registered in the name of, or transferred to, any person except an Approved Institutional Buyer that executes and delivers to the Governmental Lender a letter substantially in the form attached hereto as Exhibit B.

(c) The Funding Loan Note may only be transferred in whole.

(d) The Governmental Lender may require the payment by the entity requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer. The cost of printing any new Funding Loan Note and any services rendered or any out-of-pocket expenses incurred by the Governmental Lender in connection therewith shall be paid by the transferor of the Funding Loan Note.

(e) Baypoint shall indemnify and defend the Governmental Lender against any claim brought by any transferor or transferee of the Funding Loan Note in respect of the Borrower Loan Documents in the event that Baypoint permits a transfer of a Funding Loan Note in violation of the restrictions in Sections 4.3(b), (c) and (d) above.

## ARTICLE V

### REPAYMENT OF THE FUNDING LOAN

#### 5.1 Funding Loan Repayment.

(a) The Funding Loan shall be evidenced by the Funding Loan Note which shall be executed by the Governmental Lender in the form attached hereto as Exhibits A. The Governmental Lender agrees to pay to Baypoint, but only from amounts received by the Governmental Lender (or Baypoint, in its capacity as agent for the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Note and the other Borrower Loan Documents, principal of and interest on the Funding Loan at the times, in the manner, in the amount and as provided in the Funding Loan Note and this Funding Loan Agreement.

Interest on the Funding Loan Note shall be paid at the same rate, on the same dates and in the same amounts as the interest payable on the Borrower Note. The payment or prepayment of principal of or premium, if any, on the Funding Loan Note shall be identical with and shall be made on the same terms and conditions as the principal of or premium, if any, on the Borrower Note. Any payment by the Borrower of principal and interest or premium, if any, on the Borrower Note shall be deemed to be like payments or prepayments of principal and interest or premium, if any, on the Funding Loan Note.

(b) The Governmental Lender further agrees to cause the Borrower to pay, solely by the execution of the Borrower Loan Agreement and the assignment thereof to Baypoint and appointment of Baypoint as agent for the Governmental Lender under this Funding Loan Agreement, all late charges and prepayment penalties as set forth in the Funding Loan Note, all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments; provided, however, that the Governmental Lender reserves the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Project and the Governmental Lender's obligations hereunder will be limited as provided in Sections 4.1, 5.2 and 6.14 hereof.

5.2 Nature of the Governmental Lender's Obligations. The Governmental Lender shall repay the Funding Loan Note, but only from amounts received by the Governmental Lender or Baypoint (in its capacity as assignee of the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Note and the other Borrower Loan Documents, pursuant to the terms of the Funding Loan Note irrespective of any rights of set-off, recoupment or counterclaim the Governmental Lender might otherwise have against Baypoint or any other person. The Governmental Lender will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Funding Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the acquisition, rehabilitation or operation of any of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Funding Loan or the Project; (iii) any event constituting force majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the Governmental Lender or Baypoint to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Funding Loan Note; it being the intention of the parties that, as long as any of the Funding Loan Note or any portion thereof remains outstanding and unpaid, the Governmental Lender shall be obliged to repay the Funding Loan, but only from amounts received by the Governmental Lender or Baypoint (in its capacity as assignee of the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Note and the other Borrower Loan Documents. This Section 5.2 shall not be construed to release the Governmental Lender from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Governmental Lender from asserting any rights which it may have against Baypoint under the Funding Loan Note or under any provision of law or to prevent or restrict the Governmental Lender from prosecuting or defending any action or proceeding by or against Baypoint or the Borrower or taking any other action to protect or secure its rights, or to prevent or restrict Baypoint from asserting any rights which it may have against the Borrower.

Notwithstanding the foregoing, neither the members of the Board of Supervisors of the Governmental Lender nor the officers or agents of the Governmental Lender shall be personally

liable for the amounts owing under this Funding Loan Agreement, the Funding Loan Note or any of the other Funding Loan Documents; and Baypoint's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth in Section 9.3 hereof and, if a default also exists under the Borrower Loan Agreement or the Borrower Note, to commence foreclosure under Deed of Trust and the other Borrower Loan Documents and the exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under the Funding Loan Note, Baypoint shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender or Baypoint may have against the Borrower.

## ARTICLE VI

### FURTHER AGREEMENTS

6.1 Successor to the Governmental Lender. The Governmental Lender will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law or assure the assumptions of its obligations hereunder by any public trust or political subdivision succeeding to its powers.

6.2 Additional Instruments. The Governmental Lender hereby covenants to execute and deliver, or cause to be executed and delivered, at the expense of the Borrower, such additional instruments and to perform such additional acts, or cause the performance of such additional acts, as may be necessary, in the written opinion of Baypoint, acting in good faith, to carry out the intent of this Funding Loan Agreement and the Funding Loan Note or to perfect or give further assurances of any of the rights granted, or provided for in this Funding Loan Agreement, the Assignment Agreement or the other Funding Loan Documents.

6.3 Books and Records. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to Baypoint, and subject to the provisions of Sections 4.1, 5.2 and 6.14 hereof, cause the Borrower to permit Baypoint or its duly authorized representatives access during normal business hours to the books and records of the Borrower pertaining to the Borrower Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, Baypoint and their duly authorized representatives, and at the sole expense of the Borrower.

6.4 Notice of Certain Events. The Governmental Lender hereby covenants to advise Baypoint promptly in writing of the occurrence of any Event of Default under and as defined in the Borrower Loan Agreement or of the Regulatory Agreement of which it has received written notice, or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default thereunder of which it has received written notice, in each case by transmitting to Baypoint a copy of the notice of such Event of Default or event received by the Governmental Lender.

6.5 Compliance with Usury Laws. Notwithstanding any other provision of this Funding Loan Agreement, it is agreed and understood that in no event shall this Funding Loan Agreement, with respect to the Funding Loan Note, be construed as requiring the Governmental Lender or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Funding Loan Agreement and the Funding Loan Note in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of the principal amount of the Funding Loan Note, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Funding Loan Agreement and the Funding Loan Note or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount then owing on the related Funding Loan Note.

The provisions of this Section prevail over any other provision of this Funding Loan Agreement.

6.6 No Reliance on Governmental Lender. In entering into this Funding Loan Agreement and the Borrower Loan Agreement, Baypoint has not looked to, or expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof) or any other matter pertaining to the merits or risks of the transactions contemplated by this Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to Baypoint to secure repayment of the Funding Loan Note. The Governmental Lender has made no representations to any party relating to the Borrower, the Project, the Borrower Loan or the security or sources of payment therefor, except as expressly stated in this Funding Loan Agreement, the Borrower Loan Agreement, the Tax Certificate, Assignment of Deed of Trust and the Regulatory Agreement.

6.7 No Arbitrage. Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, the Governmental Lender shall not take nor permit nor suffer to be taken, any action with respect to the proceeds of Funding Loan Note or the Governmental Lender Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Funding Loan Note or the Governmental Lender Note to be an "arbitrage bond" within the meaning of section 148 of the Code and the Regulations promulgated thereunder. The Governmental Lender covenants, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, to cause the Borrower to rebate to the United States Treasury any amounts which are required to be rebated thereto pursuant to the Code and any regulations promulgated thereunder with respect to the Funding Loan Note and the Governmental Lender Note, and the Borrower shall cause payment of an amount equal to excess investment earnings with respect to the Governmental Obligations to the United States in accordance with the Regulations, all at the sole expense of the Borrower.

6.8 Limitation on Issuance Costs. The Governmental Lender shall assure, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and the Tax Certificate, that, from the proceeds of the Governmental Lender Note received by the Governmental Lender and any investment earnings thereon, an amount not in excess of two percent (2%) of the aggregate amount of the Governmental Obligations shall be used to pay for, or provide for the payment of costs associated with the issuance, execution and delivery of the Governmental Obligations. For this purpose, if the fees of Pacific Western Bank are retained as a discount on the purchase of the Governmental Lender Note, such retention shall be deemed to be an expenditure of proceeds of the Governmental Obligations for said fees.

6.9 Federal Guarantee Prohibition. The Governmental Lender shall take no action nor, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, permit nor suffer any action to be taken if the result of the same would be to cause the Funding Loan Note or the

Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

6.10 Prohibited Facilities. The Governmental Lender, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, shall assure that no portion of the proceeds of the Funding Loan Note or the Governmental Lender Note 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. The Governmental Lender, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, shall assure that no portion of the proceeds of the Funding Loan Note or the Governmental Lender Note shall be used for an office unless the office is located on the premises of the facilities constituting a portion of the Project and unless not more than a de minimus amount of the functions to be performed at such office is not related to the day-to-day operations of one or more of the Project.

6.11 Use Covenant. Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, the Governmental Lender shall not use or knowingly permit the use of any proceeds of Funding Loan Note, of the Governmental Lender Note or of any other funds of the Governmental Lender, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in the Funding Loan Note and the Governmental Lender Note not meeting the requirements of Section 142(d) of the Code as applicable to the Project.

6.12 Limitation of Expenditure of Proceeds. The Governmental Lender shall assure, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, that not more than 3 percent of the amount advanced on the Senior Borrower Loan is used for other than Qualified Project Costs (as defined in the Regulatory Agreement) and that the amount of the Borrower Loan and any amount advanced on the Senior Borrower Loan used for land or an interest in land total less than 25 percent of the total of the Borrower Loan and the Senior Borrower Loan.

6.13 Tax-Exempt Status of Governmental Obligations. The Governmental Lender covenants to and for the benefit of Baypoint that, notwithstanding any other provisions of this Funding Loan Agreement or any other instrument, it will:

(a) not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions expressly required of it under this Funding Loan Agreement, which would cause the interest payable on the Funding Loan Note to be includable in gross income of the owner of the Funding Loan Note for federal income tax purposes;

(b) whenever and so often as requested by Baypoint, the Governmental Lender (at the sole cost and expense of the Borrower) shall do and perform all acts and things permitted by law and necessarily desirable in order to assure the interest paid by the Governmental Lender on the Funding Loan Note will be excluded from the gross income of the owner of the Funding Loan Note for federal income tax purposes pursuant to Section 103 of the Code, except in the event where the owner of the Funding Loan Note is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(c) not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions expressly required of it under the Senior Bank Loan Agreement, which would cause the interest payable on the Governmental Lender Note to be includable in gross income of the owner of the Governmental Lender Note for federal income tax purposes; and

(d) whenever and so often as requested by Baypoint, the Governmental Lender (at the sole cost and expense of the Borrower) shall do and perform all acts and things permitted by law and necessarily desirable in order to assure the interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the owner of the Governmental Lender Note for federal income tax purposes pursuant to Section 103 of the Code, except in the event where the owner of the Governmental Lender Note is a "substantial user" of the facilities financed with the Funding Loan or a "related person" within the meaning of Section 147(a) of the Code.

For purposes of this Section 6.13 the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's knowledge and control and no acts, omissions or directions of the Borrower, Baypoint or any other Person shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on an opinion of Tax Counsel.

The covenants of the Governmental Lender in this Section 6.13 are made solely in reliance on the representations and covenants of the Borrower set forth in the Borrower Loan Agreement, the Tax Certificate and the Regulatory Agreement and a default by the Borrower with respect thereto shall not be considered a default of the Governmental Lender hereunder. The covenants of the Governmental Lender in this Section 6.13 are limited to those actions within its control, and further limited to the extent that the costs and expenses of taking such actions are to be borne by the Borrower or a third party.

#### 6.14 Immunities and Limitations of Responsibility of Governmental Lender.

(a) The Governmental Lender shall be entitled to the advice of counsel, and the Governmental Lender shall be wholly protected as to action taken or omitted in reliance on such advice. The Governmental Lender may rely conclusively on any written or other document furnished to it hereunder or under the Borrower Loan Agreement and reasonably believed by it to be genuine. The Governmental Lender shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person, except its own officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The Governmental Lender shall not be required to take any remedial action (other than the giving of notice) hereunder or under any of the other Funding Loan Documents unless indemnity in a form acceptable to the Governmental Lender is furnished for any expense or liability to be incurred in connection with such remedial action. The Governmental Lender shall be entitled to reimbursement from the Borrower for its expenses reasonably incurred or advances reasonably made, with interest at the maximum rate of interest permitted under applicable law, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the Governmental Lender may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.



(b) A default by the Borrower in any of its covenants, representations and agreements in the Borrower Loan Agreement, Regulatory Agreement or Tax Certificate on which the Governmental Lender is relying in the various sections of this Article VI shall not be considered a default hereunder by the Governmental Lender.

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section 2.10 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement. Such indemnity shall survive payment of the Funding Loan and discharge of this Funding Loan Agreement.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR THE BORROWER LOAN, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

## ARTICLE VII

### SECURITY

7.1 Security for the Funding Loan. To secure the payment of the Funding Loan and the Funding Loan Note, the Governmental Lender hereby grants, bargains, sells, conveys, assigns, transfers, hypothecates, pledges and sets over to Baypoint (excepting only the Reserved Rights) a lien on and security interest in the following described property (collectively, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all income, revenues, proceeds and other amounts to which Governmental Lender is entitled to derive from or in connection with the Project and the Borrower Loan Documents, including all amounts due under the Borrower Loan Agreement, the Borrower Note or the other Borrower Loan Documents and all amounts obtained after the exercise of the remedies provided in the Borrower Loan Documents and all receipts credited under the provisions of the Borrower Loan Agreement against said amounts payable;

(b) All right, title and interest of the Governmental Lender in, to and under the other Borrower Loan Documents, together with all rights, remedies, privileges and options pertaining to, the Borrower Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Documents;

(c) All right, title and interest of the Governmental Lender in and to (i) the right to collect and receive net proceeds of any policy of insurance maintained pursuant to the Borrower Loan Documents; (ii) any award or payment becoming payable to Governmental Lender under the Borrower Loan Documents by reason of any condemnation of the Project, any improvements located thereon or any conveyance in lieu of condemnation; and (iii) any bankruptcy, insolvency, reorganization or condemnation proceeding involving the Borrower or party related to the Borrower with respect to the Borrower Loan Documents; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subject to the lien of this Funding Loan Agreement as additional security by Governmental Lender or anyone on its part or with its consent or which pursuant to any of the provisions hereof or the Borrower Loan Documents may come into the possession or control of Baypoint.

The pledge and assignment of the security interest granted in the Security pursuant to this Section 7.1 for the payment of principal of, premium, if any, and interest on the Funding Loan Note, in accordance with its terms and provisions and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Funding Loan Note by the Governmental Lender. The Security so pledged and/or thereafter received by Governmental Lender or Baypoint shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind whether in tort, contract or otherwise against Governmental Lender irrespective of whether such parties have notice thereof.

7.2 Suits to Protect the Security. Baypoint shall have the power to institute and maintain such proceedings as Baypoint may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect the interest in the Security and in the rent, issues, profits, revenues and other income arising therefrom.

## ARTICLE VIII

### AGENCY

8.1 Appointment of Baypoint as Agent. The Governmental Lender hereby irrevocably appoints Baypoint 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, except for the Reserved Rights.

8.2 Authority of Baypoint. Baypoint is authorized and agrees to advance monies on behalf of the Governmental Lender to fund the Borrower Loan upon satisfaction of the conditions set forth in the Borrower Loan Agreement and otherwise to act on behalf of the Governmental Lender under the Borrower Loan Documents, except for the Reserved Rights. Except for the Reserved Rights, Baypoint is hereby authorized, directed and empowered to exercise all the rights, powers or remedies of the Governmental Lender under the Borrower Loan Agreement and the other Borrower Loan Documents, and to make all determinations and exercise all options and elections thereunder, without the necessity of further advice or consultation with, or consent or authorization by, the Governmental Lender, and all actions taken by Baypoint under the Borrower Loan Agreement or any of the other Borrower Loan Documents shall be valid and shall have the same force and effect, as if taken by the Governmental Lender. Baypoint shall have the right to exercise any rights, remedies, conferred on the Governmental Lender pursuant to the Borrower Loan Documents (except for the Reserved Rights) as may be necessary or convenient to (i) enforce the payment of any amounts owing by Borrower under the Borrower Loan Documents and prepayments thereof, or (ii) otherwise to protect the interest of the Governmental Lender or Baypoint upon a default by Borrower under the Borrower Loan Documents. Baypoint agrees to provide the Governmental Lender any notices given by it or delivered to it pursuant to the Borrower Loan Agreement

regarding the occurrence of an Event of Default (as defined in the Borrower Loan Agreement), the acceleration of the Borrower Loan or the foreclosure of the Deed of Trust and shall provide written notice to Governmental Lender of any amendment to the Borrower Note or the Borrower Loan Agreement. Baypoint shall have the right to collect all payments and other amounts received by the Governmental Lender from or on behalf of the Borrower pursuant to the Borrower Loan Agreement or the other Borrower Loan Documents, including prepayments thereof, except for payments of amounts owing by the Borrower to the Governmental Lender in respect of the Reserved Rights.

8.3 Successor Agent. Anything herein to the contrary notwithstanding, any corporation or association into which Baypoint 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 Baypoint 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.

8.4 Consent to Assignment. The Governmental Lender agrees that Baypoint shall have the right to assign all of its rights under this Agreement, and under all instruments and documents executed by the Governmental Lender pursuant to this Agreement, to an Affiliate of Baypoint, or to a subsequent owner of all of the Funding Loan Note and the Funding Loan as permitted under Section 4.3. Baypoint will advise the Governmental Lender in writing of any such assignment and the Governmental Lender will execute and deliver to Baypoint any documents (at the expense of Baypoint) necessary to effectuate such assignment in forms provided by Baypoint, and will not take any action to impair Baypoint's right to assign such rights pursuant to this Section.

8.5 Power of Attorney. The Governmental Lender hereby irrevocably makes, constitutes and appoints Baypoint (and any of Baypoint's officers, employees or agents, as appropriate and as designated by Baypoint) as the Governmental Lender's true and lawful attorney-in-fact with full power of substitution, subject to the Reserved Rights, to (a) sign in the name of the Governmental Lender any assignments, notices of default, notices of election to sell, assignments and substitutions of trustee or similar documents necessary or appropriate to enforce the remedies of the Governmental Lender under the Borrower Loan Agreement, the Borrower Note, the Deed of Trust or any of the other Borrower Loan Documents, including complaints, motions and any other pleadings necessary to secure the appointment of a receiver under the Deed of Trust, (b) to appear in any bankruptcy, insolvency, reorganization, condemnation or other action or proceeding, and (c) to prepare applications for, negotiate and settle claims, and collect any distribution, award or other amount becoming payable through or as the result of (i) any such proceedings, (ii) any insured or uninsured casualty loss, or (iii) any condemnation, taking or conveyance in lieu of condemnation of any of the assets that are the subject of the Borrower Loan Agreement, the Borrower Note, the Deed of Trust or the other Borrower Loan Documents. The power of attorney granted by the Governmental Lender to Baypoint hereunder, being coupled with Baypoint's interest in the Funding Loan, is irrevocable until all of the obligations of Governmental Lender under the Funding Loan Note have been satisfied and discharged in full.

8.6 Acceptance. Baypoint hereby accepts the assignments and pledge made herein for the purpose of securing the payments due pursuant to the Funding Loan Agreement.

8.7 Conditions. This Article VIII shall confer no obligations or impose no duties upon Baypoint beyond those expressly provided in this Funding Loan Agreement and the Borrower Loan Agreement. This Article VIII shall confer no obligations or impose no duties upon the Governmental Lender beyond those expressly provided in this Funding Loan Agreement.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default. Each of the following shall be an “Event of Default”:

(a) The Governmental Lender shall fail to perform or observe any of its covenants or agreements contained in this Funding Loan Agreement or the Funding Loan Note including the failure to pay any installment of interest or principal on the Funding Loan Note, and such failure shall continue during and after the period specified in Section 9.2; or

(b) Any representation or warranty of the Governmental Lender hereunder shall be determined by Baypoint to have been false in any material respect when made; or

(c) The Borrower shall fail to pay to the Governmental Lender when due the amounts required to be paid under the Borrower Loan Agreement or the Borrower Note, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency receivership, liquidation or similar proceedings after the expiration of any curative provision contained therein; or

(d) the occurrence of any other Event of Default under and as defined in the Borrower Loan Agreement; or

(e) the occurrence of any Event of Default under and as defined in the Senior Bank Loan Agreement or the Senior Borrower Loan Agreement, after taking into account any notice and cure periods provided for therein.

9.2 Notice of Default; Opportunity to Cure. No default under Section 9.1 hereof shall constitute an Event of Default until:

(a) The Governmental Lender by registered or certified mail, shall have received notice from Baypoint of such default specifying the same and stating that such notice is a “Notice of Default”; and

(b) With respect to an event described in Section 9.1(a) only, the Governmental Lender shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within 30 days, such default shall not constitute an Event of Default hereunder so long as (i) the Governmental Lender or the Borrower institutes corrective action within said 30 days, and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of the Tax Counsel to the Governmental Lender, the failure to cure said default within 30 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Funding Loan Note. The Governmental Lender may, but shall not in any way be required to, correct a default on behalf of the Borrower under the Borrower Loan Agreement or the Borrower Note.

9.3 Remedies. Whenever any Event of Default under Section 9.1 hereof shall have happened and be continuing, Baypoint may take whatever remedial steps as may be allowed under the law, this Funding Loan Agreement and the other Funding Loan Documents. Upon the occurrence of an Event of Default, Baypoint may (i) by notice in writing to the Governmental Lender, declare the principal of the Funding Loan Note then outstanding, and the interest accrued and any premium thereon, to be due and payable immediately, upon any such declaration the same shall become and shall be immediately due and payable, anything in this Funding Loan Agreement or in the Funding Loan Note contained to be contrary notwithstanding, and/or (ii) pursue such other remedies as are permitted under applicable law, subject in any event to the provisions of Sections 4.1, 5.2 and 6.14 hereof. Upon the occurrence and during the continuance of an Event of Default, Baypoint shall have all rights, powers and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, Baypoint may proceed at law or in equity or otherwise, to the extent permitted by applicable law: (a) to take possession of the Security or any part thereof, with or without legal process, and to hold, service and administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited) the sale of all or any part of the Security; (b) to become mortgagee of record for the Borrower Loan; (c) to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, to take such alternate courses of action, as it may deem appropriate; or (d) to take such steps to protect and enforce its rights whether by action, suit or proceeding and equity or at law for the specific performance of any term, condition or agreement in this Funding Loan Agreement, the Funding Loan Note or the other Funding Loan Documents or in and on the execution of any power herein granted, or for the foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Baypoint may elect, subject in any event to the Reserved Rights.

9.4 Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender or Baypoint should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Governmental Lender contained herein, the Governmental Lender shall cause the Borrower (solely by its execution and assignment of the Borrower Loan Agreement) on demand to pay to the Governmental Lender or Baypoint the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

9.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to Baypoint is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Funding Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Baypoint to exercise any remedy reserved to it in this Article IX, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

9.6 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Funding Loan Agreement should be breached by the Governmental Lender or the Borrower and thereafter waived by Baypoint, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

9.7 Actions Under Borrower Loan Documents. Whether or not an Event of Default has occurred, Baypoint, in its sole discretion, shall have the sole right to waive or forebear any term,

condition, covenant or agreement in the Borrower Loan Documents applicable to the Borrower or any breach thereof, other than the covenant that would adversely impact the tax-exempt status of the interest on the Funding Loan Note and provided that Baypoint shall have no right to waive and the Governmental Lender may seek specific performance by Borrower to enforce the Reserved Rights.

9.8 Application on Money Collected. Any money collected by Baypoint pursuant to this Article and any other sums held by Baypoint as part of the Security, shall be applied in the following order, at the date or dates fixed by Baypoint:

(a) First, to the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to Governmental Lender or Baypoint;

(b) Second, to the payment of the whole amount of the Funding Loan, as evidenced by the Funding Loan Note, then due and unpaid and respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or sum sufficient therefor has been so collected at the rates prescribed therefore in the Funding Loan Note) on overdue principal of and any premium on the Funding Loan so called provided, however, that partial payments of any portion of the Funding Loan shall be applied by Baypoint in such order priority as Baypoint may determine in its sole and absolute discretion; and

(c) Third, the remainder, if any to the person legally entitled thereto.

## ARTICLE X

### MISCELLANEOUS

10.1 Entire Agreement. This Funding Loan Agreement, the Funding Loan Note and the other Funding Loan Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and Baypoint with respect to the subject matter hereof.

10.2 Notices. All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been personally delivered or mailed by first class mail postage prepaid, addressed as follows:

If to the Governmental Lender:	County of Contra Costa, California Department of Conservation and Development 30 Muir Road Martinez, California 94553 Attention: Assistant Deputy Director Telephone: (925) 674-7888
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If to the Borrower: Baypoint Family Apartments, L.P.  
c/o Meta Housing Corporation  
11150 West Olympic Boulevard, Suite 620  
Los Angeles, California 90094  
Attention: President  
Telephone: (310) 575-3543

with a copy to: Bocarsly Emden Cowan Esmail &  
Arndt LLP  
633 West 5th Street, 64th Floor  
Los Angeles, California 90071  
Attention: Nicole Deddens, Esq.  
Telephone: (213) 239-8029

with a copy to: [to come – equity partner’s address]

and a copy to: [to come – equity partner’s attorney’s address]

If to Baypoint: Baypoint Family Apartments, LLC  
c/o Meta Housing Corporation  
11150 West Olympic Boulevard, Suite 620  
Los Angeles, California 90094  
Attention: President  
Telephone: (310) 575-3543

10.3 Assignments. Except as provided in Section 4.3, neither this Funding Loan Agreement nor the Borrower Loan Agreement may be assigned by any party hereto or thereto in whole or in part without the prior written consent of the other, which consent shall not be unreasonably withheld; and, in the case of the Governmental Lender, to the extent such assignment is not in contravention of its policies for multifamily housing revenue debt obligations.

10.4 Severability. If any provision of this Funding Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

10.5 Execution of Counterparts. This Funding Loan 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.

10.6 Amendments, Changes and Modifications. Except as otherwise provided in this Funding Loan Agreement, this Funding Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto. The Baypoint may require, as a condition to any amendment, change or modification of this Funding Loan Agreement or the other Funding Loan Documents that Baypoint shall have received, at the expense of the Borrower, an opinion of Tax Counsel that such amendment shall not adversely affect the exclusion of interest on the Funding Loan Note from gross income for purposes of federal income tax.

10.7 Governing Law; Venue. This Funding Loan Agreement and the Funding Loan Note shall be governed by and shall be enforceable in accordance with the laws of the State

applicable to contracts made and performed in the State, and venue shall be the County unless the Governmental Lender waives this requirement in writing.

10.8 Term of Agreement. This Funding Loan Agreement shall be in full force and effect from the date hereof until such time as the Funding Loan shall have been fully paid or provision made for such payment. Time is of the essence in this Funding Loan Agreement.

10.9 Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Funding Loan.

10.10 Nonrecourse Obligation of the Borrower. Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 9.1 of the Borrower Loan Agreement are by this reference incorporated herein.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the date first above written.

COUNTY OF CONTRA COSTA,  
CALIFORNIA

By: \_\_\_\_\_  
John Kopchik,  
Director, Department of  
Conservation and Development

BAYPOINT FAMILY APARTMENTS, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Signature Page to Funding Loan Agreement – Baypoint Family Apartments]

03007.44:J15316

**EXHIBIT A**

**COUNTY OF CONTRA COSTA, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(BAYPOINT FAMILY APARTMENTS) SERIES 2018B-2**

dated November \_\_, 2018

FOR VALUE RECEIVED, the County of Contra Costa, California (the "Governmental Lender"), acknowledges itself indebted and hereby promises to pay to the order of Baypoint Family Apartments, LLC ("Baypoint"), or its successors and assigns, the sum of three million five hundred thousand dollars (\$3,500,000.00), together with interest thereon at the same interest rate as the applicable interest rate specified in the Borrower Loan Agreement with respect to the Borrower Note, until the Governmental Lender's obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The Outstanding Balance shall mean the original principal amount of the Funding Loan that has not been repaid by the Governmental Lender to Baypoint as of the date of calculation of the Outstanding Balance. This Note shall be governed by and be payable in accordance with the terms and conditions of the Funding Loan Agreement dated as of November 1, 2018 (the "Funding Loan Agreement"), between Baypoint and the Governmental Lender pursuant to which Baypoint has made the Funding Loan to the Governmental Lender.

This Note is issued to evidence the Funding Loan by Baypoint to the Governmental Lender and the obligation of the Governmental Lender to repay the same, but only from amounts received by or on behalf of the Governmental Lender from Baypoint Family Apartments, L.P., a California limited partnership (the "Borrower"), pursuant to a Loan Agreement, dated as of November 1, 2018, by and among the Governmental Lender, Baypoint and the Borrower (the "Borrower Loan Agreement") and the other Borrower Loan Documents (as defined in the Borrower Loan Agreement).

Monthly payments of principal and interest shall be payable under this Note to the same extent as payments of principal and interest are due and payable on the Borrower Note, as provided in the Borrower Loan Agreement. The Outstanding Balance of this Note shall be due and payable in its entirety on November 1, 2073.

The Funding Loan and this Note are pass-through obligations relating to the Borrower Loan made by Governmental Lender from the proceeds of the Funding Loan to the Borrower under the Borrower Loan Agreement. Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note.

In the event the Governmental Lender fails to make the timely payment of any monthly payment due on this Note, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Governmental Lender shall pay (solely from amounts received from the Borrower as late charges under the Borrower Loan Agreement) to Baypoint a late charge in the amount specified in Section 3.6 of the Borrower Loan Agreement. If the principal balance of this Note is accelerated following an Event of Default (as defined in the Funding Loan Agreement), Baypoint may increase the interest rate on the portion of the Funding Loan to be evidenced by this Note the Default Rate (as defined in the Borrower Loan Agreement).

The Governmental Lender may, at any time, prepay the principal amount of this Note to the same extent and subject to the terms and conditions set forth in the Borrower Loan Agreement for the prepayment of the Borrower Note.

All sums due hereunder shall be paid in lawful money of the United States of America. Interest on this Note shall be computed as provided for the Borrower Note in the Borrower Loan Agreement. All payments made hereunder shall be credited and applied as provided in the Funding Loan Agreement.

THIS NOTE IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE PLEDGE AND ASSIGNMENT OF CERTAIN PAYMENTS ON THE BORROWER NOTE OR FUNDS OTHERWISE PROVIDED UNDER THE BORROWER LOAN DOCUMENTS. NONE OF THE GOVERNMENTAL LENDER, ITS MEMBERS OR THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS SHALL BE DIRECTLY, INDIRECTLY, CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THIS NOTE, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR PAYMENT OF THIS NOTE. THIS NOTE IS NOT SECURED BY A PLEDGE OF THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER OR THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS, NOR DOES THE FUNDING LOAN CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

THIS NOTE AND THE REPAYMENT PROVISIONS CONTAINED HEREIN ARE SUBJECT TO THE PROVISIONS AND LIMITATIONS CONTAINED IN SECTIONS 4.1, 5.2 AND 6.14 OF THE FUNDING LOAN AGREEMENT.

No delay or omission on the part of Baypoint in exercising any remedy, right or option under this Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of Baypoint under this Note and the Funding Loan Documents are and shall be cumulative and are in addition to all the rights, remedies and options of Baypoint at law or in equity or under any other agreement.

Presentment for payment, notice of dishonor, protest or notice of protest are hereby waived. The acceptance by Baypoint of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the owner hereof any sum and amount less than the amount then due shall be deemed an acceptance on account only and upon condition of the acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be at default notwithstanding such acceptance of such amount on account thereof. Consent by Baypoint to any action of Governmental Lender which is subject to approval of Baypoint hereunder shall not be deemed a waiver of the right to require such consent or approval to future successive actions, waives the right to assert the defense of any statute of limitations to any debt or obligation hereunder and consents to renewals and extensions of time for payment of any amounts due under this Note.

This Note may only be transferred in accordance with the requirements of Section 4.3 of the Funding Loan Agreement, and any such transfer shall be recorded in the Note Register maintained by Baypoint.

Capitalized terms used herein which are not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement.

IN WITNESS WHEREOF, the County of Contra Costa, California has caused this Note to be executed in its name and on its behalf all as of the date first written above.

COUNTY OF CONTRA COSTA,  
CALIFORNIA

By: \_\_\_\_\_  
John Kopchik,  
Director, Department of  
Conservation and Development

[Baypoint Family Apartments – Signature Page to Funding Loan Note]

## EXHIBIT B

### FORM OF INVESTOR'S LETTER

County of Contra Costa, California

Re: County of Contra Costa, California Multifamily Housing Revenue Note  
(Baypoint Family Apartments) Series 2018B-2

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Ladies and Gentlemen:

The undersigned (the "Holder"), being the owner of the above-referenced note (the "Funding Loan Note") does hereby certify, represent and warrant for the benefit of the County of Contra Costa, California (the "Governmental Lender") that:

(a) The Holder is an Approved Institutional Buyer, as defined in Section 1.1 of the Funding Loan Agreement, dated as of November 1, 2018 (the "Funding Loan Agreement"), between the Governmental Lender and Baypoint Family Apartments, LLC.

(b) The Holder has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, and is capable of evaluating the merits and risks of its investment in the Funding Loan Note. The Holder is able to bear the economic risk of, and an entire loss of, an investment in the Funding Loan Note.

(c) The Holder is acquiring the Funding Loan Note solely for its own account for investment purposes, and does not presently intend to make a public distribution of, or to resell or transfer, all or any part of the Funding Loan Note, except as permitted by Section 4.3 of the Funding Loan Agreement.

(d) The Holder understands that the Funding Loan Note has not been registered under the Securities Act of 1933, as amended, or under any state securities laws. The Holder agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Funding Loan Note by it, and further acknowledges that any current exemption from registration of the Funding Loan Note does not affect or diminish such requirements.

(e) The Holder is familiar with the conditions, financial and otherwise, of the Borrower (as such term is used in the Funding Loan Agreement) and understands that the Borrower has no significant assets other than the Project (as defined in the Funding Loan Agreement) for payment of the Borrower Loan (as defined in the Funding Loan Agreement). Further, the Holder understands that the Funding Loan Note involves a high degree of risk. Specifically, and without in any manner limiting the foregoing, the Holder understands and acknowledges that, among other risks, the Funding Loan Note is payable solely from payments made by the Borrower on the related Borrower Note (as defined in the Funding Loan Agreement). The Holder has been provided an opportunity to ask questions of, and the Holder has received answers from, representatives of the Borrower regarding the terms and conditions of the Funding Loan Note and the Borrower Loan. The Holder has obtained all information requested by it in connection with the issuance of the Funding Loan Note as it regards necessary to evaluate all merits and risks of its investment in the Funding Loan Note. The Holder has reviewed the documents executed in conjunction with the issuance of the Funding Loan Note, including, without limitation, the Funding Loan Note, the Funding Loan Agreement, the

Borrower Note (as such term is defined in the Funding Loan Agreement) and the Borrower Loan Agreement.

(f) The Holder has entered into no arrangements with the Borrower or with any affiliate in connection with the Funding Loan Note, other than as disclosed in writing to the Governmental Lender.

(g) The Holder has authority to purchase the Funding Loan Note and to execute this letter and any other instruments and documents required to be executed by the Holder in connection with its purchase of the Funding Loan Note. The individual who is signing this letter on behalf of the Holder is a duly appointed, qualified, and acting officer of the Holder and is authorized to cause the Holder to make the certificates, representations and warranties contained herein by execution of this letter on behalf of the Holder.

(h) In entering into this transaction, the Holder has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences or other aspects of its investment in the Funding Loan Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project, including the financing or management thereof, or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to secure repayment of the Funding Loan Note.

(i) The Holder understands that the Funding Loan Note is not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, the State of California or any political subdivision or taxing district thereof; that the Funding Loan Note will never represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Funding Loan Note; and that the liability of the Governmental Lender with respect to the Funding Loan Note is subject to further limitations as set forth in the Funding Loan Note and the Funding Loan Agreement.

(j) The Holder has been informed that the Funding Loan Note (i) has not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

(k) The Holder acknowledges that it has the right to sell and transfer the Funding Loan Note, subject to compliance with the transfer restrictions set forth in Section 4.3 of the Funding Loan Agreement, including in certain circumstances the requirement for the delivery to the Governmental Lender of an holder's letter in the same form as this letter, including this paragraph. Failure to comply with the provisions of Section 4.3 of the Funding Loan Agreement shall cause the purported transfer to be null and void. The Holder agrees to indemnify and hold harmless the Governmental Lender with respect to any claim asserted against the Governmental Lender that arises with respect to any sale, transfer or other disposition of the Funding Loan Note by the Holder or any transferee thereof in violation of the provisions of the Funding Loan Agreement.

(l) None of the Governmental Lender, its members, the members of its Board of Directors or any of its employees or agents will have any responsibility to the Holder for the accuracy or completeness of information obtained by the Holder from any source regarding the

Borrower or its financial condition or regarding the Funding Loan Note, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Governmental Lender to the Holder with respect to the Funding Loan Note. The Holder acknowledges that, as between the Holder and all of such parties, the Holder has assumed responsibility for obtaining such information and making such review as the Holder deemed necessary or desirable in connection with its decision to purchase the Funding Loan Note.

(m) The Holder acknowledges that the Funding Loan Note is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the Governmental Lender has not undertaken to provide any continuing disclosure with respect to the Funding Loan Note.

The Holder acknowledges that the ownership of the Funding Loan Note by the Holder is subject to the certifications, representations and warranties herein to the addressees hereto. Capitalized terms used herein and not otherwise defined herein have the meanings given such terms in the Funding Loan Agreement.

[HOLDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_