

ATTACHMENT 9

**CONTINGENCY DRAW-DOWN AGREEMENT  
REGARDING**

**[\$7,105,000]  
City of Santa Rosa  
2017 Multifamily Housing Revenue Note  
(The Crossings on Aston Apartments)**

October 1, 2017

This Contingency Draw-Down Agreement (this “**Agreement**”) is entered into between CITIBANK, N.A. (the “**Funding Lender**”) and UHC 00596 SANTA ROSA, L.P., a California limited partnership (the “**Borrower**”) in connection with the City of Santa Rosa, 2017 Multifamily Housing Revenue Note (The Crossings on Aston Apartments) 2016 Series A (the “**Governmental Lender Note**”).

WHEREAS, City of Santa Rosa (the “**Governmental Lender**”) issued the Governmental Lender Note under a Funding Loan Agreement dated as of October 1, 2017 (the “**Funding Loan Agreement**”) between the Governmental Lender and the Funding Lender; and

WHEREAS, the Governmental Lender and the Borrower entered into a Borrower Loan Agreement dated as of October 1, 2017 (the “**Borrower Loan Agreement**”) for the purpose of financing the acquisition, construction and equipping of a multifamily residential development to be known as “**The Crossings on Aston Apartments**” (the “**Project**”). Capitalized terms in this Agreement which are not defined herein shall have the meanings given to them in the Funding Loan Agreement and the Borrower Loan Agreement; and

WHEREAS, the Funding Loan will be originated on a “draw-down” basis in accordance with Section 2.1(b) of the Funding Loan Agreement; however, certain legislative, judicial or other developments could occur or other circumstances could emerge subsequent to the Closing Date which would result in the interest on an installment or installments of the Governmental Lender Note funded after the Closing Date not being excluded from gross income for federal income tax purposes; and

WHEREAS, the Borrower, the Funding Lender and the Governmental Lender desire (1) to address the concern that such developments could occur or circumstances could emerge before the Borrower fully draws the remaining Authorized Amount of the Governmental Lender Note in the original amount of the Governmental Lender Note less the amount of the Governmental Lender Note which, on any date in question, has been advanced to fund the portion of the Funding Loan evidenced by the Governmental Lender Note and to fund advances on the Borrower Loan (the “**Remaining Authorized Amount**”), and (2) that a mechanism be put in place by which the Remaining Authorized Amount can be promptly funded by the Funding Lender to fully fund the Governmental Lender Note to the Governmental Lender, such amount to be held by the Funding Lender as undisbursed proceeds of the Funding Loan and further disbursed in accordance with this Agreement and the Disbursement Documents (as defined below) under certain circumstances set forth herein.

**NOW, THEREFORE** intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### OBLIGATIONS AND OPTIONS WITH RESPECT TO REMAINING AUTHORIZED AMOUNT PRIOR TO FULL FUNDING

#### **Section 1.01 Option of Funding Lender or Borrower to Convert Governmental Lender Note to Fully Funded Note**

In the event either the Funding Lender or the Borrower determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on installments of the Governmental Lender Note for the Remaining Authorized Amount not being excluded from gross income for federal income tax purposes, or otherwise determines that it is in its best interest to convert the Governmental Lender Note into a fully funded obligation of the Governmental Lender in order to assure that interest on the Governmental Lender Note will remain excluded from gross income for federal income tax purposes, and, in the case of such determination by the Borrower, such action will resolve the uncertainty with respect to the exclusion of interest on the Governmental Lender Note from gross income for federal income tax purposes and will not jeopardize receipt of previously committed unfunded debt or equity funding for the Project, then such party may provide a written letter of direction (a “**Draw-Down Notice**”) to the other parties hereto as provided herein to cause the Remaining Authorized Amount of the Governmental Lender Note to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5<sup>th</sup>) Business Day following the date (or such greater number of Business Days to which the Borrower and the Funding Lender may agree in writing) on which either the Borrower or the Funding Lender sends written notification to the other parties hereto referencing the Draw-Down Notice and containing substantially the following words: “The [Borrower/Funding Lender] elects to [draw/fund] the Remaining Authorized Amount of the Governmental Lender Note (\$\_\_\_\_\_) effective \_\_\_\_\_ (the “**Draw-Down Date**”).” The Draw-Down Notice will be delivered in the manner provided for notices under the Funding Loan Agreement and the Borrower Loan Agreement.

#### **Section 1.02 Relationship to Funding Loan Documents**

The Draw-Down Notice, if given, will be issued in accordance with Section 7.1 of the Funding Loan Agreement, which authorizes the Funding Lender “to establish and create from time to time such other funds and accounts or subaccounts as directed by the Funding Lender ... as may be necessary for the deposit of moneys ... received by the ... Funding Lender ... pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.” In the event of any conflict or inconsistencies between this Agreement and the Funding Loan Documents or the Borrower Loan Documents, such conflict or inconsistencies shall be resolved in accordance with the provisions of the Funding Loan Documents and Borrower Loan Documents.

#### **Section 1.03 Further Agreements**

The parties hereto each acknowledge that, if given, a Draw-Down Notice will be implemented in a simple form in order to address certain unlikely contingencies in the most expeditious manner possible. The parties further agree to proceed in a good faith manner with such further documentation, clarification, amendment of existing documents and/or supplemental direction as any party may reasonably request in order to implement the spirit of this Agreement and/or to address additional factors or circumstances arising from this Agreement or the delivery of a Draw-Down Notice.

## ARTICLE II

### REMAINING FUNDING LOAN PROCEEDS ACCOUNT

#### Section 2.01 Funding of Remaining Funding Loan Proceeds

Promptly after receipt of a Draw-Down Notice, the Funding Lender shall advance proceeds of the Governmental Lender Note in the Remaining Authorized Amount (the “**Remaining Funding Loan Proceeds**”) into a separate account to be held by the Funding Lender, such account to be known as the “**Remaining Funding Loan Proceeds Account**,” to be held for disbursements to the Borrower pursuant to the Borrower Loan Agreement and the Construction Funding Agreement and other agreements relating to the disbursement of Funding Loan Proceeds (collectively, the “**Disbursement Documents**”). The advance of the Remaining Funding Loan Proceeds shall be treated as an advance of the full remaining principal amount of the Governmental Lender Note, and a like amount of the Borrower Loan shall be deemed concurrently and simultaneously advanced under the Borrower Loan Agreement and the Governmental Lender Note shall be deemed to have been issued in the full authorized principal amount of \$[7,105,000] against payment by the Funding Lender (taking into account amounts of the Funding Loan previously funded) of the purchase price equal to the Remaining Authorized Amount.

#### Section 2.02 Creation of Remaining Funding Loan Proceeds Account

(a) Promptly after receipt of a Draw-Down Notice, the Funding Lender shall establish the Remaining Funding Loan Proceeds Account as a fund under and pursuant to the Disbursement Documents for the purposes and uses, and subject to the liens, limitations and requirements set forth in the Draw-Down Notice and in the Disbursement Documents. Within the Remaining Funding Loan Proceeds Account, the Funding Lender shall establish the “**Remaining Funding Loan Proceeds Account Earnings Subaccount**.” The Remaining Funding Loan Proceeds shall be deposited into and disbursed from the Remaining Funding Loan Proceeds Account strictly in accordance with the terms of this Agreement and the Disbursement Documents.

(b) All moneys on deposit in the Remaining Funding Loan Proceeds Account shall be held as trust funds separate and apart from, and shall not be commingled with, any other moneys of the Borrower and the Funding Lender. All investment earnings from moneys held in the Remaining Funding Loan Proceeds Account shall be transferred to the Remaining Funding Loan Proceeds Account Earnings Subaccount upon receipt by the Funding Lender, without further authorization or directions from, or notice to, any party. All investment earnings from moneys held in the Remaining Funding Loan Proceeds Account Earnings Subaccount shall be retained in the Remaining Funding Loan Proceeds Account Earnings Subaccount upon transfer into such account by the Funding Lender. Moneys held in the Remaining Funding Loan Proceeds Account Earnings Subaccount shall be used solely for the purposes provided in the Disbursement Documents.

(c) All funds deposited into the Remaining Funding Loan Proceeds Account shall be and remain the funds of the Funding Loan pledged to the repayment of the Funding Loan until disbursed to the Borrower pursuant to the Disbursement Documents. The Borrower agrees to pay to the Funding Lender on the Draw-Down Date, an amount of funds to be agreed upon by the Funding Lender and the Borrower prior to the Draw-Down Date to cover the expected “**Negative Arbitrage**” for the period between the Draw-Down Date and the date of each expected draw in accordance with the then-approved draw schedule under the Disbursement Documents (the “**Negative Arbitrage Deposit**”), to be deposited by the Funding Lender into a separate account to be held by the Funding Lender, such account to be known as the “**Negative Arbitrage Account**.” For this purpose, the Negative Arbitrage shall be calculated, with respect to each subsequent expected draw by multiplying the dollar amount of such draw

by the difference between (i) the Interest Rate set forth in Schedule A to the Borrower Note relating to the Governmental Lender Note and an amount sufficient to cover any scheduled Additional Borrower Payments pursuant to Section 2.5 of the Borrower Loan Agreement, and (ii) the interest rate, if any, which may be obtainable under any Permitted Investments into which the Borrower and Funding Lender may agree the Negative Arbitrage Deposit and the Remaining Funding Loan Proceeds may be invested while held under this Agreement (provided that the assumed rate of earnings following the date on which any such Permitted Investment matures or may be redeemed shall be 0%). As long as the Interest Rate is a variable rate, Negative Arbitrage shall be computed by assuming for any period in question, that the Governmental Lender Note will bear interest during such period at the annual interest rate equal to the variable rate in effect on the date of computation plus 1.50%, unless amount on deposit in the Remaining Funding Loan Proceeds Account are invested in Permitted Investments bearing interest at the same index or other variable rate on which the Interest Rate on the Governmental Lender Note is computed, in which case the spread between the two rates may be used. Subsequent to the Draw-Down Date, on five (5) Business Days Written Notice, the Funding Lender may require that the amount of the Negative Arbitrage Deposit be increased to the extent it believes in good faith that the potential Negative Arbitrage exposure may be greater than the amount of the Negative Arbitrage Deposit then on deposit due to expected delays in the draw schedule or other factors. The Borrower agrees to pay to the Funding Lender to be held hereunder, any amounts necessary to enable the Governmental Lender to pay when due all amounts due with respect to the Funding Loan, to the extent payments made or required to be made under the Borrower Loan Agreement and the Borrower Note are insufficient for such purpose.

The Funding Lender also agrees to work in good faith with the Borrower to evaluate and, if agreed upon, to obtain the consents of other required parties, to effect reasonable changes in the documentation and investment alternatives pertaining to the Funding Loan to minimize the Negative Arbitrage associated with the funding of the Remaining Authorized Amount pursuant to this Agreement; provided that such changes and allowances are consistent with the Funding Lender's underwriting and approval of the Funding Loan and its required returns from its role as Funding Lender. The Borrower agrees to cover any and all out-of-pocket expenses which may be associated with the foregoing.

### **Section 2.03 Investment of Funds**

(a) Moneys in the Remaining Funding Loan Proceeds Account shall initially be invested by the Funding Lender (either directly or through a third party escrow agent selected by the Funding Lender) in Permitted Investments to be agreed upon by the Borrower. The Funding Lender (and, if selected, any escrow agent selected by the Funding Lender) shall not be liable for any loss arising from investments made in accordance with this Section, or for any loss resulting from the redemption or sale of any such investments as authorized by this Section. Investments of moneys in the Remaining Funding Loan Proceeds Account shall be made in accordance with the requirements of the Disbursement Documents and the Tax Certificate.

(b) The Funding Lender (and, if selected, any escrow agent selected by the Funding Lender) shall keep full, complete and accurate records of the amounts and dates of all sums earned from the investment of moneys deposited in the Remaining Funding Loan Proceeds Account and shall send copies of such records and the information described in this subsection to the Governmental Lender, the Funding Lender and the Borrower at such times as reasonably requested by any party hereto.

### **Section 2.04 Security Interest in Remaining Funding Loan Proceeds Account**

(a) All amounts held by the Funding Lender (and, if selected, any escrow agent selected by the Funding Lender) in the Remaining Funding Loan Proceeds Account (including without limitation investment earnings deposited into the Remaining Funding Loan Proceeds Account Earnings Subaccount

other than earnings required to be paid to the United States Treasury as “arbitrage rebate” payments pursuant to the Tax Certificate) and the Negative Arbitrage Account shall be held by the Funding Lender pursuant to the terms of this Agreement and the Disbursement Documents for the security and protection of all present and future owners of the Governmental Lender Note. In furtherance thereof, the Borrower hereby pledges, grants and conveys to the Funding Lender a lien on and security interest in all moneys held in the Remaining Funding Loan Proceeds Account, the Remaining Funding Loan Proceeds Account Earnings Subaccount and the Negative Arbitrage Account, such lien and security interest to be held for the benefit, security and protection of all present and future owners of the Governmental Lender Note. Any moneys realized by the Funding Lender or by the Governmental Lender by reason of the lien and security interest created hereby shall be used solely to pay principal of and interest on, and any other costs, expenses and amounts due on the Governmental Lender Note, or the acceleration of the Governmental Lender Note in accordance with the applicable provisions of the Funding Loan Agreement and the Disbursement Documents.

(b) It is the intent of the parties hereto that the pledge and security interest created under this Agreement shall be a first priority perfected lien and security interest, paramount to all other claims. Such security interest may be perfected by the filing of financing statements pursuant to the UCC as in effect in the State and by any other means of perfection allowed by California law. The parties hereto further agree that any necessary continuation statements shall be filed by the Funding Lender, at the sole expense of the Borrower, within the time prescribed by the UCC in order to continue the perfection of the security interest created by this Agreement. The Funding Lender and the Borrower each represents that it has not previously granted, and warrants that it will not hereafter grant, any other pledge or security interest in the Remaining Funding Loan Proceeds Account or the Negative Arbitrage Account.

**Section 2.05 Disbursement of Funds from Remaining Funding Loan Proceeds Account, Remaining Funding Loan Proceeds Account Earnings Subaccount and Negative Arbitrage Account**

Amounts in the Remaining Funding Loan Proceeds Account and the Remaining Funding Loan Proceeds Account Earnings Subaccount shall be disbursed to the Borrower or used for the prepayment of the Funding Loan by the Funding Lender, which disbursement shall be made by the Funding Lender on the same terms and conditions that apply to an advance of proceeds of the Funding Loan pursuant to the Funding Loan Agreement and the Disbursement Documents. Amounts in the Negative Arbitrage Account shall be disbursed on the same terms and conditions that apply to capitalized interest pursuant to the Disbursement Documents. The Funding Lender shall provide written notice to the Governmental Lender and the Borrower concurrently with any disbursement of funds held pursuant to the terms of this Agreement and the Disbursement Documents.

**Section 2.06 Cross Default; Remedies; Term; Disposition of Excess Moneys**

(a) The parties hereto agree that a default under this Agreement shall constitute an Event of Default under the Funding Loan Agreement and the Borrower Loan Agreement, entitling the non-defaulting parties to all remedies thereunder. Without limiting the generality of the foregoing, in the event of a default by the Borrower in its obligation to convert the Funding Loan to a fully funded loan as contemplated by this Agreement in accordance with a Draw-Down Notice delivered by the Funding Lender, the Funding Lender shall be authorized without further direction to take on behalf of the Borrower and at the cost and expense of the Borrower such steps as it deems necessary to effect compliance with the terms of this Agreement.

(b) This Agreement shall terminate on the earliest to occur of: (1) the date on which all remaining funds in the Remaining Funding Loan Proceeds Account (including the Remaining Funding Loan Proceeds Account Earnings Subaccount) and the Negative Arbitrage Account have been disbursed pursuant to Section 2.05; (2) one Business Day following the occurrence of the Conversion Date (as defined under the terms of the Disbursement Documents), or (3) when the Governmental Lender Notes are no longer outstanding (as defined under the terms of the Funding Loan Agreement and the Disbursement Documents) and no amounts are due and payable by the Borrower under the terms of the Funding Loan Agreement and Borrower Loan Agreement.

(c) Upon the termination of this Agreement, any moneys remaining in the Remaining Funding Loan Proceeds Account shall be disbursed by the Funding Lender on the same terms and conditions that apply to an advance of proceeds of the Funding Loan pursuant to the Funding Loan Agreement and the Disbursement Documents.

(d) Upon the termination of this Agreement, any moneys remaining in the Negative Arbitrage Account shall be disbursed by the Funding Lender solely for the following purposes at the following times and in the following amounts:

(i) first, after application of funds pursuant to (c) above, for application to the prepayment of the principal of the Borrower Loan and to a corresponding repayment of the principal amount of the Funding Loan at its maturity, upon the redemption or prepayment, whether voluntary or mandatory, prior to the Maturity Date, or upon the acceleration of the Borrower Loan or the Funding Loan and any amounts due under the Funding Loan Agreement, as applicable, prior to maturity, in each case, as directed by Funding Lender, to the extent principal of the Borrower Loan and the Funding Loan is due and payable;

(ii) next, after application of funds pursuant to (d)(i) above, for application first to the partial payment of interest accrued under the Borrower Loan and the Funding Loan and Funding Loan Agreement and unpaid to the date thereof;

(iii) next, to the payment of any unpaid fees due and owing or other amounts due and owing under the Funding Loan Agreement and the Disbursement Documents; and

(iv) finally, any remaining balance shall be released to the Borrower.

**[Signatures begin on following page.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed, sealed and delivered as of the day and year first written above. This Agreement may be simultaneously executed in several counterparts each of which shall be an original, but all of which shall constitute but one and the same instrument.

**FUNDING LENDER**

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name: Gregory S. Goldberg  
Title: Authorized Signatory

[Signatures to The Crossings on Aston Contingency Draw-Down Agreement continued on following page]

[Counterpart signature page to The Crossings on Aston Contingency Draw-Down Agreement]

**BORROWER:**

**UHC 00596 SANTA ROSA, L.P.,**  
a California limited partnership

By: UHC 00596 Santa Rosa Holdings LLC,  
a California limited liability company,  
Its: General Partner

By: \_\_\_\_\_  
John F. Bigley  
Its: Manager

By: Central Valley Coalition for Affordable  
Housing, a California nonprofit public  
benefit corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
Christina Alley  
Its: Chief Executive Officer