

**SQUIRE DRAFT 11/21/2013**

**FUNDING LOAN AGREEMENT**

**Among**

**CITIBANK, N.A.,  
as Funding Lender**

**and**

**CITY AND COUNTY OF SAN FRANCISCO,  
as Governmental Lender**

**and**

**[FISCAL AGENT]  
as Fiscal Agent**

**Dated as of February 1, 2014**

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## **FUNDING LOAN AGREEMENT**

This Funding Loan Agreement, dated as of February 1, 2014 (this “Funding Loan Agreement”), is entered into by CITIBANK, N.A., (together with any successor hereunder, the “Funding Lender”) and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”) and [FISCAL AGENT], a national banking association organized and existing under the laws of the United States of America, as fiscal agent (the “Fiscal Agent”).

### **RECITALS**

WHEREAS, the Governmental Lender is authorized to provide financing for multifamily rental housing pursuant to and in accordance with the Charter of the City and County of San Francisco, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended (the “Act”); and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the City and County of San Francisco (the “City”) and intended to be occupied in part by persons of low and moderate income; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

WHEREAS, Carroll Avenue Senior Homes, L.P., a California limited partnership (the “Borrower”), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition, construction, operation and equipping of a 121-unit multifamily affordable residential rental housing development located at 1751 Carroll Avenue, San Francisco, California, currently identified as Bayview Senior Housing (the “Project”); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement dated as of February 1, 2014 (as it may be supplemented or amended, the “Borrower Loan Agreement”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower has executed and delivered to the Governmental Lender its Multifamily Note dated the Closing Date (the "Borrower Note") and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project pursuant to a Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of February 1, 2014 (the "Security Instrument"), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note (Bayview Senior Housing), 2014 Series[], ated as of the Closing Date (the "Governmental Lender Note"), evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement, the valid, binding and legal limited obligations of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a "conduit issuer" and the Funding Loan and the Governmental Lender Note will be limited obligations of the Governmental Lender as described in Article V hereof;

NOW, THEREFORE, in consideration of the promises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions. For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) References to the Funding Loan as “tax exempt” or to the “tax exempt status” of the Funding Loan are to the exclusion of interest on the Funding Loan (other than any portion of the Funding Loan owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Affiliate” shall mean, 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.

“Authorized Amount” shall mean \$[28,500,000], the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

“Authorized Denomination” shall mean \$250,000 principal amount and any multiple of \$5,000 in excess thereof.

“Authorized Governmental Lender Representative” shall mean the Mayor, the Director of the Mayor’s Office of Housing, the Director of Housing Development and the Deputy Director of the Mayor’s Office of Housing, or such other person at the time designated to act on behalf of the Governmental Lender as evidenced by a written certificate furnished to the Funding Lender and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by an Authorized Governmental Lender Representative. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative.

“Borrower” shall mean Carroll Avenue Senior Homes L.P., a California limited partnership.

“Borrower Controlling Entity” shall mean the Co-General Partner of the Borrower.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, dated as of February 1, 2014, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any event of default set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean the amount of \$[28,500,000].

“Borrower Loan Documents” shall have the meaning given such term in the Borrower Loan Agreement.

“Borrower Note” shall have the meaning given such term in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“City” shall mean the City and County of San Francisco.

“Closing Date” shall mean [February \_\_, 2014], the date that initial Funding Loan proceeds are disbursed hereunder.

“Code” shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Conditions to Conversion” shall have the meaning given such term in the Construction Funding Agreement.

“Construction Funding Agreement” means that certain Construction Funding Agreement dated as of [February 1, 2014], between the Funding Lender, as agent for the Governmental Lender pursuant to the Borrower Loan Agreement, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Contingency Draw-Down Agreement” means the Contingency Draw-Down Agreement dated as of [February 1, 2014], among the Funding Lender, the Fiscal Agent and the Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.



“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.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Defeasance Securities” shall mean (i) Government Obligations and (ii) pre-refunded fixed interest rate municipal obligations meeting the following conditions: (a) the municipal obligations are not subject to redemption prior to maturity, or the trustee has been given irrevocable instruction concerning their calling and redemption and the issuer has covenanted not to redeem such obligations other than as set forth in such instructions; (b) the municipal obligations are secured by cash and/or Government Obligations; (c) the principal of and interest on the Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the municipal obligations; (d) the Government Obligations serving as security for the municipal obligations are held by an escrow agent or trustee; (e) the Government Obligations are not available to satisfy any other claims, including those of or against the trustee or escrow agent; and (f) the municipal obligations are rated “AAA” by S&P or “Aaa” by Moody’s.

“Draw-Down Notice” has the meaning set forth in the Contingency Draw-Down Agreement.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Fiscal Agent’s Fees” shall mean the ongoing annual compensation and expenses of the Fiscal Agent payable annually in arrears, each February 1 in an amount equal to \$[] per annum.

“Fitch” shall mean Fitch, Inc., its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “Fitch” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, dated as of [February 1, 2014], by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Government Certificates” shall mean evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Government Obligations,

including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Government Obligations; (ii) the owner of the Government Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Government Obligations; and (iii) the underlying Government Obligations are held in trust in a special account, segregated from the custodian's general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

“Government Obligations” shall mean direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon) if held by a custodian on behalf of the Trustee, obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, and prerefunded municipal obligations rated in the highest rating category by Moody's and S&P.

“Governmental Lender” shall mean the City and County of San Francisco.

“Governmental Lender Note” shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

“Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody's of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for three months or less and “Aaa” for greater than three months. If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody's rate a Permitted Investment and (iii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated “AAA” by S&P and “A1” by Moody's is not rated in the Highest Rating Category.

“Investor Letter” shall mean a letter in substantially the form attached to this Funding Loan Agreement as Exhibit B, duly executed by the holder of the Governmental Lender Note and delivered to the Governmental Lender.

“Maturity Date” shall mean [February 1, 2047].

“Maximum Rate” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Funding Loan under State law.

“Moody’s” shall mean Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “Moody’s” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.

“Noteowner” or “owner of the Governmental Lender Note” means the owner, or as applicable, collectively the owners, of the Governmental Lender Note as shown on the registration books maintained by the Funding Lender pursuant to Section 2.4(d).

“Ongoing Governmental Lender Fee” shall mean the annual fee of the Governmental Lender, payable as provided in Section 19 of the Regulatory Agreement.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, if and to the extent permitted by law and only to the extent that the same are acquired at Fair Market Value:

- (1) Government Obligations or Government Certificates;
- (2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself) and any other agency or instrumentality of the United States of America the obligations of which are guaranteed by the full faith and credit of the United States of America;
- (3) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by S&P of “AAAm-G” or “AAAm” and by Moody’s of “Aaa”;
- (4) Certificates of deposit issued by a state or national bank or a state or federal savings and loan; provided that such certificates of deposit will be either (i) continuously and fully insured by the FDIC; or (ii) have a maturity of not greater than 365 days and have one of the two highest short-term letter and numerical ratings, at the time of purchase, of Moody’s and S&P;

(5) Savings accounts or money market deposits that are fully insured by FDIC;

(6) Investment agreements, including guaranteed investment contracts, provided either (i) the long-term unsecured debt or claims ability of the issuer or guarantor thereof is rated, at the time of purchase, in one of the two highest rating category by Moody's and S&P, or (ii) such agreement is fully collateralized by Government Obligations or Government Certificates;

(7) Commercial paper of "prime" quality rated, at the time of purchase, in one of the two highest rating category by Moody's and S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States;

(8) Bonds or notes issued by any state or municipality which are rated, at the time of purchase, by Moody's and S&P in one of the two highest long-term rating categories assigned by such agencies;

(9) Federal funds or banker's acceptances which are eligible for purchases by members of the Federal Reserve System, drawn on any bank the short-term obligations of which are rated in the highest rating category by Moody's and S&P; provided that the maturity cannot exceed 270 days;

(10) Repurchase agreements with maturities of either (a) 30 days or less, or (b) less than one year, provided that the collateral is marked-to-market daily, entered into with financial institutions such as banks or trust companies organized under state or federal law, insurance companies, or government bond dealers reporting to, or trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and a member of SPIC, or with a dealer or parent holding company that is rated, at the time of purchase, "A" or better by Moody's and S&P. The repurchase agreement must be in respect of Government Obligations or Government Certificates or obligations described in paragraph (b) herein, which, exclusive of accrued interest, will be maintained at least 100% of par. In addition, repurchase agreements will meet the following criteria: (i) the third party (who will not be the provider of the collateral) has possession of the repurchase securities and the Government Obligations or Government Certificates; (ii) failure to maintain the requisite collateral levels will require liquidation; and (iii) the third party having possession of the securities has a perfected, first priority security interest in the securities;

(11) Defeasance Securities described in clause (ii) of the definition thereof; and

(12) Any other debt or fixed income security specified by the City (except securities of the City and any agency, department, commission or instrumentality thereof) and rated, at the time of purchase, in one of the two highest rating categories by Moody's and S&P, including prerefunded municipal obligations.

(13) The Local Agency Investment Fund administered by the State of California; and

(14) Any investment, with confirmation from the Rating Agencies that the ratings on the Governmental Lender Note, if any, will not be lowered as a result of such investment.

In connection with the purchase of any Permitted Investment, the City may enter into agreements, including forward purchase agreements, with the seller thereof.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledged Revenues” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by or owing to the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any Prepayment Premium as set forth in the Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Qualified Financial Institution” shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by the Fiscal Agent for the investment of

moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “Permitted Investments” or an entity which guarantees or insures, as applicable, the agreement, a “Qualified Financial Institution” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

“Rating Agency” shall mean any one and each of S&P, Moody’s and Fitch then rating the Governmental Lender Note or any other nationally recognized statistical rating agency then rating the Governmental Lender Note or the Securities, which has been approved by the Funding Lender.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreement” shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date hereof, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

“Remaining Funding Loan Proceeds Account” has the meaning set forth in the Contingency Draw-Down Agreement.

“Remaining Funding Loan Proceeds Account Earnings Subaccount” has the meaning set forth in the Contingency Draw-Down Agreement.

“Resolution” shall mean the resolution of the Governmental Lender authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Responsible Officer” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Second Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term “Second Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax exempt municipal debt established by S&P is “AA” for a term greater than one year, with corresponding ratings by Moody’s of “Aa.” If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody’s rate a Permitted Investment and (iii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated “AA” by S&P and “A” by Moody’s is not rated in the Second Highest Rating Category.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of February 1, 2014 (as amended, restated and/or supplemented from time to time), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

“Servicer” shall mean any servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement entered into between the Funding Lender and the servicer identified herein. Initially, the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“S&P” shall mean Standard & Poor’s Rating Services, A Division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “S&P” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“State” shall mean the State of California.

“Tax Certificate” shall mean the Tax Certificate and Agreement, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower.

“Tax Counsel” shall mean Squire Sanders (US) LLP or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Funding Loan constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Funding Loan is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“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 from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.17 thereof, its rights to indemnification under Section 5.15 thereof, its rights to attorneys’ fees under Sections 5.11 and 5.14 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement, and the Governmental Lender’s rights, including but not limited to, rights to reimbursement and payment of its fees, costs and expenses, under the Regulatory Agreement.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

Section 1.2 Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.3 Date of Funding Loan Agreement. The date of this Funding Loan Agreement is intended as a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

Section 1.4 Designation of Time for Performance. Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

Section 1.5 Interpretation. The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.



## ARTICLE II

### TERMS; GOVERNMENTAL LENDER NOTE

#### Section 2.1 Terms.

(a) Principal Amount. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

(b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent as and when needed to make each advance to the Borrower in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Funding Agreement. Upon each such advance of principal under the Borrower Loan Agreement and the Construction Funding Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement. Subject to the terms and conditions of this Funding Loan Agreement, the Funding Lender agrees to advance to the Fiscal Agent an amount equal to [\$55,000] on the Closing Date, which amount the Governmental Lender shall subsequently disburse to the Borrower under the terms and conditions of the Borrower Loan Agreement.

(c) Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after December 31, 2017; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of the Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

(d) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date, at which time the entire principal amount of the Funding Loan, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(e) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (e) and in paragraphs (f) and (g) of this Section 2.1.

The Fiscal Agent on behalf of the Funding Lender shall keep a record of all principal advances and principal repayments made under the Governmental Lender Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

(f) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(g) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note.

(h) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

Section 2.2 Form of Governmental Lender Note. As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the

Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

Section 2.3 Execution and Delivery of Governmental Lender Note. The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual signature of an Authorized Governmental Lender Representative. The signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the delivery of the Governmental Lender Note or shall not have held such offices at the date of the Governmental Lender Note.

Section 2.4 Investor Letter; Participations; Sale and Assignment.

(a) The Funding Lender shall deliver to the Governmental Lender a signed Investor Letter in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender may not sell or assign the Governmental Lender Note and the Funding Loan except in whole to a transferee who agrees to become the “Funding Lender” under the Funding Loan Documents and assume all of the obligations and perform all of the duties of the Funding Lender thereunder, but the Funding Lender shall have the right to sell participation interests in the Governmental Lender Note and the Funding Loan in Authorized Denominations, provided that the Governmental Lender Note and the Funding Loan or such interests shall be sold only to purchasers that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, an Investor Letter. Notwithstanding the preceding sentence, no Investor Letter shall be required for the Funding Lender to (i) assign the Governmental Lender Note and the Funding Loan or participation interests in the Governmental Lender Note and the Funding Loan to any Affiliate of the Funding Lender or (ii) sell or assign the Governmental Lender Note and the Funding Loan or participation interests in the Governmental Lender Note and the Funding Loan to a Qualified Institutional Buyer as defined in Rule 144A of the Securities Act (a “QIB”) or to a special purpose entity, a trust or custodial arrangement, the interests in which may be sold (with appropriate disclosure and acknowledgement of transfer restrictions) or transferred only in Authorized Denominations to (A) QIBs or (B) “accredited investors” as defined in Section 501(a) of Regulation D promulgated under the Securities Act who deliver to the Funding Lender, with a copy to the Governmental Lender, an Investor Letter or (iii) sell or assign the Governmental Lender Note and the Funding Loan (or a participation therein) if the Governmental Lender Note is then rated “A” or better by at least one Rating Agency.

(c) No service charge shall be made for any sale or assignment of any portion of the Governmental Lender Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(d) The Funding Loan, or any interest therein, and the Governmental Lender Note shall be in fully-registered form transferable to subsequent holders only on the registration

books which shall be maintained by the Funding Lender for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender.

### ARTICLE III

#### PREPAYMENT

Section 3.1 Prepayment of the Governmental Lender Note from Prepayment under the Borrower Note. The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds of the Governmental Lender received by the Governmental Lender from the Borrower to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium, if applicable, payable under the Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note, at the direction of the Funding Lender in accordance with the terms of the Borrower Note, at a prepayment price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

Section 3.2 Notice of Prepayment. Notice of prepayment of the Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to Funding Lender in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

### ARTICLE IV

#### SECURITY

Section 4.1 Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the terms and provisions of this Funding Loan Agreement and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding

Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, 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 Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement (except to the extent made on account of the Unassigned Rights); provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding 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 Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement, and any amounts held at any time in the Remaining Funding Loan Proceeds Account and the Remaining Funding Loan Proceeds Account Earnings Subaccount, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; 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 subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender 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 Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Funding Lender 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 in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof. The

Funding Lender shall have, in connection with the security interest granted hereunder, all rights and remedies available to a secured party under the Uniform Commercial Code as enacted in the State.

Section 4.2 Delivery of Security. To provide security for the payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Lender Note its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

(a) The Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;

(b) The originally executed Borrower Loan Agreement and Regulatory Agreement;

(c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;

(d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and

(e) Uniform Commercial Code financing statements, in form suitable for filing, giving notice of the pledge by the Governmental Lender of the Security to Funding Lender under this Funding Loan Agreement.

The Governmental Lender shall deliver and deposit with the Funding Lender, at the expense of the Borrower, such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security, including, at the request of the Funding Lender, without limitation any amounts held under the Contingency Draw-Down Agreement.

## ARTICLE V

### LIMITED LIABILITY

#### Section 5.1 Source of Payment of Funding Loan and Other Obligations.

(a) The Funding Loan and the Governmental Lender Note are limited obligations of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental

Lender, the City, the State or any political subdivision thereof (except the Governmental Lender, to the limited extent authorized by the Act and set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or the Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and, notwithstanding anything herein or in any other instrument to the contrary, none of the Funding Loan or the Governmental Lender Note or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

(b) The Funding Loan and the Governmental Lender Note, together with the interest and premium, if any, thereon and the purchase price thereof, shall not be deemed to constitute a debt or liability of the Governmental Lender, the State or of any political subdivision or public agency thereof or a pledge of the faith and credit of the Governmental Lender, the City, the State or any political subdivision or public agency thereof, but, notwithstanding anything herein or in any other instrument to the contrary, shall be payable solely from the funds provided therefor pursuant to this Funding Loan Agreement. The Funding Loan and the Governmental Lender Note are only limited obligations of the Governmental Lender as provided by the Act, and, notwithstanding anything herein or in any other instrument to the contrary, neither the Governmental Lender nor any public agency shall under any circumstances be obligated to pay the Funding Loan or the Governmental Lender Note except from the Security.

(c) Neither the faith and credit nor the taxing power of the State, the Governmental Lender, any public agency or any political subdivision of the State is pledged to the payment of the principal of, premium, if any, purchase price of or interest on the Funding Loan or the Governmental Lender Note, nor is the State, the Governmental Lender, any public agency or any political subdivision of the State, in any manner obligated to make any appropriation for such payment.

(d) Notwithstanding anything herein or in any other instrument to the contrary, no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Funding Loan or the Governmental Lender Note or for any claim based thereon or upon any obligation, covenant or agreement in this Funding Loan Agreement contained (except from the Security), against the Governmental Lender, any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff, or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Governmental Lender, any member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby expressly waived and released as a condition of, and in consideration for, the execution of this Funding Loan Agreement.

Section 5.2 Exemption from Individual Liability. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future commissioner, officer, director, employee or agent of the Governmental Lender in his individual capacity, and neither the commissioners, the officers, directors, employees or

agents of the Governmental Lender executing the Governmental Lender Note or this Funding Loan Agreement shall be liable personally on the Governmental Lender Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Note or the execution of this Funding Loan Agreement.

## ARTICLE VI

### CLOSING CONDITIONS; APPLICATION OF FUNDS

Section 6.1 Conditions Precedent to Closing. Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender and the Governmental Lender, each in its sole discretion, as applicable, of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

- (a) Receipt by the Funding Lender of the original Governmental Lender Note;
- (b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed to the Funding Lender by the Governmental Lender;
- (c) Receipt by the Funding Lender of executed counterparts of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate, the Security Instrument, and any UCC financing statement required by the Security Instrument;
- (d) Receipt by the Funding Lender of a certified copy of the Resolution;
- (e) Receipt by the Governmental Lender of an executed Investor Letter from the Funding Lender;
- (f) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement;
- (g) Receipt by the Funding Lender and the Governmental Lender of a Tax Counsel Approving Opinion;
- (h) Receipt by the Funding Lender and the Governmental Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act of 1933, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
- (i) Receipt by Funding Lender and Governmental Lender of the Agreement for Housing Assistance Payments Contract with the Secretary of Housing and Urban Development (“HUD”) for Section 8 project assistance (“AHAP”), with respect to 120 units at the Project, and an executed Assignment thereof by Borrower in favor of Funding Lender;



(j) Receipt by Funding Lender and Governmental Lender of an opinion of Borrower counsel and an opinion of Fiscal Agent counsel in form and substance acceptable to Funding Lender and Governmental Lender and their respective counsel; and

(k) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender or Tax Counsel may require.

## ARTICLE VII

### FUNDS AND ACCOUNTS

Section 7.1 Authorization to Create Funds and Accounts. Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender, Fiscal Agent, and the Servicer, if any, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, Fiscal Agent, or the Servicer 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.

Section 7.2 Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Certificate.

Section 7.3 Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Note Payment Fund;
- (b) The Project Fund (and within such fund, the Note Proceeds Account and the Equity Account);
- (c) The Expense Fund;
- (d) The Costs of Funding Fund; and
- (e) The Rebate Fund.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent in trust for the benefit of the Funding Lender, and, except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

Section 7.4 Note Payment Fund. The Governmental Lender and the Borrower shall have no interest in the Note Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Note Payment Fund any amounts received from the Borrower as payments of principal of or premium or interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Expense Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Note Payment Fund in the following order of priority:

*First*, to pay or provide for the payment to the Funding Lender, as Holder of the Governmental Lender Note, of the interest then due on the Funding Loan;

*Second*, to pay or provide for the payment or the prepayment, to the Funding Lender, as Holder of the Governmental Lender Note, of principal on the Funding Loan, provided moneys have been transferred or deposited into the Note Payment Fund for such purpose; and

*Third*, to pay or provide for the payment of the Funding Loan on the Maturity Date.

Section 7.5 Expense Fund. The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Regulatory Agreement or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (i) the City's Ongoing Governmental Lender Fee pursuant to Section 19 of the Regulatory Agreement to the Government Lender as and when due, (ii) the Fiscal Agent amounts due pursuant to the definition of "Fiscal Agent's Fees" herein, (iii) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (ii) hereof, and (iv) upon receipt, to, or at the direction of, the Governmental Lender, any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (i) hereof.

In the event that the amounts on deposit in the Expense Fund are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within five Business Days to the Fiscal Agent of the amount of such deficiency.

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Ongoing Governmental Lender Fee on the applicable due date, shall be provided

by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date.

Upon payment by the Borrower of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent to the Governmental Lender.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Ongoing Governmental Lender Fee not later than 30 days prior to the due date for payment of the Ongoing Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

Section 7.6 Costs of Funding Fund. [to be revised if closing costs being paid from Escrow] On the Closing Date, the Borrower shall deposit or cause to be deposited with the Fiscal Agent, [from its own funds,] for deposit in the Costs of Funding Fund, the amount of \$[\_\_\_\_\_]. Amounts in the Costs of Funding Fund shall be disbursed by the Fiscal Agent to pay Costs of Funding on the Closing Date or as soon as practicable thereafter as follows: moneys on deposit in the Costs of Funding Fund shall be applied to pay Costs of Funding at the written direction of the Authorized Borrower Representative, countersigned by the Funding Lender and the Governmental Lender, in the form attached hereto as Exhibit D. Any interest earnings on amounts on deposit in the Costs of Funding Fund shall remain in the Fund. Any moneys remaining in the Costs of Funding Fund (including investment proceeds) after the earlier of (i) the payment of all costs of issuance as certified in writing to the Fiscal Agent by the Borrower or (ii) a period of six (6) months after the Closing Date, shall be paid to or at the direction of the Borrower and the Costs of Funding Fund shall be closed.

#### Section 7.7 Project Fund.

All proceeds of the Funding Loan provided by the Funding Lender shall be deposited to the Note Proceeds Account of the Project Fund and disbursed as herein provided. Any other amounts provided to the Fiscal Agent by or for the account of the Borrower shall be deposited in the Equity Account of the Project Fund. The Fiscal Agent shall use moneys in the Project Fund for the acquisition, construction and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Not less than 95% of the moneys deposited in and credited to the Note Proceeds Account of the Project Fund, and taking into account proceeds of the Funding Loan (if any) deposited in the Costs of Funding Fund, representing the proceeds of the Funding Loan, including Investment Income thereon, will be expended for Qualified Project Costs (the "95% Requirement"). The amounts on deposit in the Project Fund shall not be applied to the payment of Costs of Funding.

Before any payment representing Note proceeds shall be made from the Project Fund, the Regulatory Agreement and the Security Instrument shall have been executed and recorded in the official records of the City and County of San Francisco and there shall be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit E and approved by the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement, with a copy to the Governmental Lender. The Fiscal

Agent shall be entitled to conclusively rely upon any Written Requisition in determining whether to disburse amounts from the Project Fund.

In connection with a Written Requisition, except for a written request for amounts representing accrued interest due and payable on the Governmental Lender Note:

(1) Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (notice of which default has been given in writing by an authorized officer of the Funding Lender to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

(2) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Written Requisition signed only by the Funding Lender (and without any need for any signature by an Authorized Borrower Representative), so long as the amount to be disbursed is to be used solely to make payments of principal, interest and/or fees due under the Funding Loan Documents.

(3) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the rehabilitation work or to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, rehabilitation, renovation, equipping, improvement and installation of the Project.

(b) Upon receipt of each Written Requisition submitted by the Borrower and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within one Business Day, make payment from the appropriate account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 95% Requirement. The approval in writing of a Written Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrower shall, insofar

as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall immediately provide Written Notice to the Borrower, the Funding Lender and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the transfers as and when required by this Section 7.7(b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the Borrower and such person, firm or corporation, or (iii) upon receipt by the Funding Lender and the Governmental Lender of evidence that the Borrower has previously paid such amount and Written Direction to the Fiscal Agent as to such as evidenced by the Funding Lender's approval of the Written Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the Written Consent of the Funding Lender, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Funding Loan. If a Written Requisition signed by the Authorized Borrower Representative and countersigned by an authorized officer of the Funding Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

(c) Immediately prior to any mandatory prepayment of the Funding Loan pursuant hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Funding Lender, be transferred to the Note Payment Fund to be applied to the prepayment of the Funding Loan pursuant hereto.

(d) Amounts on deposit in the Project Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in each account of the Project Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Project Fund.

(e) Prior to the Completion Date, the Funding Lender may provide a written request for accrued interest due and payable on the Governmental Lender Note which shall be provided to the Governmental Lender within three (3) Business Days, but which shall not be subject to the Governmental Lender's prior approval.

Section 7.8 Rebate Fund. The Fiscal Agent shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(a) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(b) All payments to the United States of America pursuant to this Section shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst).

(c) The Fiscal Agent shall preserve all statements, forms and explanations received from the Borrower and delivered to the Fiscal Agent and all records of transactions in the Rebate Fund until six years after the retirement of the Governmental Lender Note.

(d) The Fiscal Agent may conclusively rely on the instructions of the Borrower (based upon the report of the Rebate Analyst) with regard to any actions to be taken by it pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower or the Rebate Analyst to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided in Subsection (b) above, the Fiscal Agent shall have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instruction related thereto.

(e) If at any time during the term of this Funding Loan Agreement the Governmental Lender, the Fiscal Agent or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide to the other persons named herein, a Tax Counsel No Adverse Effect Opinion and an opinion of Tax Counsel that such action shall be in compliance with the laws of the State and the terms of this Funding Loan Agreement.

(f) Moneys and securities held by the Fiscal Agent in the Rebate Fund shall not be deemed funds of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the owners to secure the Governmental Lender Note or any other obligations.

(g) Moneys in the Rebate Fund may be separately invested and reinvested by the Fiscal Agent, at the request of and as directed in writing by the Borrower, in Permitted Investments, subject to the Code. The Fiscal Agent shall sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(h) Notwithstanding anything to the contrary in this Funding Loan Agreement, no payment shall be made by the Fiscal Agent to the United States if the Borrower shall furnish to the Governmental Lender and the Fiscal Agent, an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Fiscal Agent with respect to such withdrawal.

(i) The Fiscal Agent shall keep and make available to the Governmental Lender and the Borrower records concerning the investments of all funds held by the Fiscal Agent pursuant to the Funding Loan Agreement including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which no Governmental Lender Note is Outstanding in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

(j) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 7.8 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Fiscal Agent.

## ARTICLE VIII

### REPRESENTATIONS AND COVENANTS

Section 8.1 General Representations. The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a municipal corporation organized and existing under the laws of the State of California, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the limited obligation represented by the Governmental Lender Note and the Funding Loan and apply the proceeds of such obligation or loan to finance the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Note, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

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

(e) The California Debt Limit Allocation Committee has provided an allocation of the State's [2013] private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Governmental Lender Note. The Governmental Lender hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by section 3.03 of said Notice.

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 AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

Section 8.2 No Encumbrance on Security. The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

Section 8.3 Repayment of Funding Loan. Subject to the provisions of Articles III and V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement, to the extent of repayments and prepayments received by the Governmental Lender with respect to the Borrower Loan.



Section 8.4 Servicer. The Funding Lender may appoint a Servicer to service and administer the Governmental Loan and/or the Borrower Loan on behalf of the Funding Lender, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement.

Section 8.5 Borrower Loan Agreement Performance.

(a) The Funding Lender and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required or obligated) perform and observe any such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify the Borrower, the Servicer and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

Section 8.6 Maintenance of Records; Inspection of Records.

(a) The Funding Lender shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Funding Lender shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Governmental Lender and its representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender will at any and all times, upon the reasonable request of the Servicer, the Borrower or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender relating to the Project and the Funding Loan, if any, and to make copies thereof.

Section 8.7 Tax Covenants. The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will:

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered by the Governmental Lender, to the extent necessary in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof 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;

(b) 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, not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions, which would cause the interest payable on the Governmental Lender Note to be includable in gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof 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) Whenever and so often as requested by Funding Lender (at the sole cost and expense of the Borrower), do and perform all acts and things permitted by law and necessary in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof 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;

(d) 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, not knowingly take any action, or knowingly permit or suffer any action to be taken, if the result of the same would be to cause the Funding Loan to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Funding Loan, or any other moneys which may be deemed to be proceeds of the Funding Loan pursuant to the Code, which would cause the Funding Loan to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full.

For purposes of this Section 8.7 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, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

Section 8.8 Performance by the Borrower. Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Default under the Borrower Loan Agreement exists.

Section 8.9 Maintenance of Records. The Funding Lender shall keep and maintain adequate records pertaining to the funds and accounts, if any, established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein.

## ARTICLE IX

### DEFAULT; REMEDIES

Section 9.1 Events of Default. Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

- (d) A default in the payment of any Additional Borrower Payments; or
- (e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

Section 9.2 Acceleration of Maturity; Rescission and Annulment; Discharge of Funding Loan.

(a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Note and the interest accrued to be immediately due and payable, by notice to the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Note shall (subject to Section 9.15 hereof) become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender rescind and annul such declaration and its consequences if:

(i) There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Funding Loan, (2) the principal of and Prepayment Premium on the Funding Loan that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Funding Loan, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the nonpayment of the principal of the Funding Loan which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) At any time following the third anniversary of the occurrence of an Event of Default and acceleration of the Funding Loan, the Governmental Lender may elect to pay the Funding Loan and the Governmental Lender Note by transferring and assigning the Security to the Funding Lender, and upon such transfer the Funding Lender shall have no further rights against the Governmental Lender hereunder and such payment shall constitute payment in full of the Funding Loan and the Governmental Lender Note.

The Funding Lender hereby agrees that upon such transfer and assignment the Funding Lender shall no longer look to the Governmental Lender to receive payment of the principal and interest and all other sums, if any, which are due under the Governmental Lender Note, but shall

look solely to the Security, the rights under the Security to enforce the indebtedness and other obligations of the Borrower and the other parties, and the funds and other assets transferred to the Funding Lender hereunder.

(d) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

### Section 9.3 Additional Remedies; Funding Lender Enforcement.

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Section 9.2(c) hereof, this Section 9.3, Section 9.9 hereof and Section 9.15 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

Section 9.4 Application of Money Collected. Any money collected by the Funding Lender pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

(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 the Governmental Lender, the Funding Lender, the Servicer and the Rebate Analyst;

(b) Second: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in 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 a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Funding Loan) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Funding Loan; provided, however, that partial interests in any portion of the Funding Loan shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

(c) Third: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(d) If and to the extent this Section 9.4 conflicts with the provisions of the Servicing Agreement, the provisions of the Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

Section 9.5 Remedies Vested in Funding Lender. All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto.

Section 9.6 Restoration of Positions. If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

Section 9.7 Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.8 Delay or Omission Not Waiver. No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any

subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 9.9 Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 9.10 Remedies Under Borrower Loan Agreement or Borrower Note. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the Governmental Lender Note has been accelerated or declared due and payable by reason of an Event of Default.

Section 9.11 Waiver of Appraisal and Other Laws.

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

Section 9.12 Suits to Protect the Security. The Funding Lender shall have power to institute and to maintain such proceedings as it 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 its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.



Section 9.13 Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 9.14 Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

Section 9.15 Limited Liability of Governmental Lender. Notwithstanding anything herein or in any other instrument to the contrary, the liability of the Governmental Lender for the payment of the principal of and interest on the Funding Loan, whether upon maturity or acceleration of maturity, or for the payment of any other amounts due with respect thereto shall be strictly limited as provided in Article V hereof. Without limiting the generality of the foregoing, the obligations of the Governmental Lender to make any payments on the Governmental Lender Note shall be solely from the Pledged Revenues and other moneys and Security and from no other source. Furthermore, upon written notice by the Governmental Lender to the Funding Lender, the Funding Lender shall assume all responsibilities for enforcement of remedies under the Borrower Loan Documents, and the sole responsibility of the Governmental Lender shall be to reasonably cooperate with the Funding Lender in the Funding Lender's enforcement efforts, but at no material cost or risk to the Governmental Lender.

## ARTICLE X

### AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS

Section 10.1 Amendment of Funding Loan Agreement. Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender and the Governmental Lender; provided, however, no such amendment which materially adversely affects the right, duties, or obligations of the Borrower shall be made without the consent of the Borrower; and provided, further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be

binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

Section 10.2 Amendments Require Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

Section 10.3 Consents and Opinions. No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) to the extent requested by the Funding Lender, the Funding Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and/or an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE XI

### THE FISCAL AGENT

Section 11.1 Appointment of Fiscal Agent; Acceptance. The Governmental Lender hereby appoints [FISCAL AGENT] as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

#### Section 11.2 Certain Duties and Responsibilities of Fiscal Agent.

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(c)(4) hereof, use the same degree of care and skill in their exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business.

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(1) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(2) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

(3) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(4) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section.

(e) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(f) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

(g) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

Section 11.3 Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document, and provided that a Responsible Officer of the Fiscal Agent is aware of or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

Section 11.4 Certain Rights of Fiscal Agent. Except as otherwise provided in Section 11.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender, the Servicer or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Article VIII hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may act upon the advice of counsel of its choice concerning all matters hereof and the Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the Office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

Section 11.5 Not Responsible for Recitals. The recitals contained herein and in the Governmental Lender Note shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Funding Loan.

The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. Unless otherwise expressly provided, the Fiscal Agent shall be under no obligation to analyze, review or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

Section 11.6 May Hold Funding Loan. The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Funding Loan and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

Section 11.7 Moneys Held in Trust. Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

Section 11.8 Compensation and Reimbursement. Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan

Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

Section 11.9 Fiscal Agent Required; Eligibility. Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

Section 11.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower, the Servicer, if any, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the Written Consent of the Funding Lender (which consent of the Funding Lender shall not be unreasonably withheld), (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), subject to applicable notice and cure periods, with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender with the Written Consent of the Governmental Lender and Written Notice delivered to the Fiscal Agent and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Trustee shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

#### Section 11.11 Acceptance of Appointment by Successor.

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

Section 11.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

Section 11.13 Appointment of Co-Fiscal Agent. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them. Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co-fiscal Agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.



Section 11.14 Loan Servicing. The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and the Borrower Loan as set forth in a Servicing Agreement. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

Section 11.15 No Recourse Against Officers or Employees of Fiscal Agent. No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

## ARTICLE XII

### MISCELLANEOUS

Section 12.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a “notice”) shall be deemed to be given and made when delivered by hand or when delivered by recognized overnight delivery service:

If to the Governmental Lender: City and County of San Francisco  
Mayor’s Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5th Floor,  
San Francisco, CA 94103  
Attention: Director  
Telephone: (415) 701-5500

If to the Borrower: Carroll Avenue Senior Homes, L.P.  
720 Olive Street, Suite 2500  
St. Louis, MO 63101  
Attention: Hillary Zimmerman, Esq.  
Telephone: (314) 621-3400

Carroll Avenue Senior Homes, L.P.  
c/o McCormack Baron Salazar  
50 California Street, Suite 1500  
San Francisco, CA 94111  
Attention: Yusef Freeman  
Telephone: (415) 202-7814

With a copy to: Bocarsly Emden Cowan Esmail & Arndt  
633 West Fifth Street, 70<sup>th</sup> Floor

Los Angeles, CA 90071  
Attention: Lance Bocarsly  
Telephone: (213) 239-8088

And to: Wells Fargo Affordable Housing Community  
Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attention: Director of Tax Credit Asset  
Management

With a copy to: Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Philip Spahn, Esq.

If to the Funding Lender: Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Desk Head, Transaction Management  
Group  
Bayview Senior Housing Loan ID # [\_\_\_\_\_]

With copies to: Citibank, N.A.  
One Sansome Street, 27<sup>th</sup> Floor  
San Francisco, California 94104  
Attention: Operations Manager/Asset Manager  
Bayview Senior Housing Loan ID # [\_\_\_\_\_]

With copies to: Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Bayview Senior Housing Loan ID # [\_\_\_\_\_]

With copies to: Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Robert Molinari  
Bayview Senior Housing Loan ID # [\_\_\_\_\_]

If to the Fiscal Agent: [INSERT ADDRESS]

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this

Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

Section 12.2 Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

Section 12.3 Successors and Assigns. All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

Section 12.4 Legal Holidays. In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period from and after such date and prior to the date of payment.

Section 12.5 Governing Law. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

Section 12.6 Severability. If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

Section 12.7 Execution in Several Counterparts. This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

Section 12.8 Nonrecourse Obligation of the Borrower. Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to Section 4.1.36 of the Borrower Loan Agreement or other provisions of the Borrower 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 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

Section 12.9 Waiver of Trial by Jury. The Governmental Lender does not agree to not elect a trial by jury or to waive any jury trial and does not consent to any resolution by judicial reference. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND ONLY TO THE EXTENT ENFORCEMENT OF SUCH AGREEMENT WOULD NOT

ADVERSELY AFFECT THE ABILITY OF THE GOVERNMENTAL LENDER TO ELECT A TRIAL BY JURY, THE BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY THE BORROWER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, THE BORROWER AGREES TO THE RESOLUTION OF ALL DISPUTES BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

Section 12.10 Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted and related documents and may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.11 City Contracting Provisions. The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit C to this Funding Loan Agreement, which is incorporated in and made a part of this Funding Loan Agreement by this reference.

Section 12.12 Reference Date. This Funding Loan Agreement is dated for reference purposes only as of [February 1, 2014] and will not be effective and binding upon the parties hereto unless and until the Closing Date occurs.

*[balance of page left blank intentionally]*

IN WITNESS WHEREOF, the Funding Lender, the Governmental Lender, and the Fiscal Agent have caused this Funding Loan Agreement to be duly executed as of the date first written above.

CITIBANK, N.A.

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

Bryan Barker

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

[FISCAL AGENT], as Fiscal Agent

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

[NAME]

Authorized Signatory

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing and Community  
Development

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

[Signature page – Funding Loan Agreement (Carroll Avenue Senior Homes)]

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**CITY AND COUNTY OF SAN FRANCISCO  
MULTIFAMILY HOUSING REVENUE NOTE,  
(BAYVIEW SENIOR HOUSING) 2014 SERIES[\_\_\_]**

**DATED [FEBRUARY \_\_, 2014]**

\$28,500,000.00

R-1

FOR VALUE RECEIVED, the undersigned City and County of San Francisco (“Obligor”) promises to pay to the order of CITIBANK, N.A. (“Holder”) the maximum principal sum of TWENTY-EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$28,500,000.00) on [February 1, 2047], or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of [February 1, 2014] (the “Funding Loan Agreement”), between Obligor and [FISCAL AGENT], as fiscal agent, an amount in immediately available funds sufficient to pay the principal amount of the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a construction loan (the “Borrower Loan”) made by Obligor from proceeds of the Funding Loan to Carroll Avenue Senior Homes, L.P., a California limited partnership, as borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of [February 1, 2014] (as the same may be modified, amended or supplemented from time to time, the “Borrower Loan Agreement”), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in 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, payments on which are passed-through under the Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. None of the Governmental Lender, the City, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth



herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this Governmental Lender Note or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or pursuant to the Funding Loan Agreement at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

If there is an Event of Default under the Funding Loan Agreement, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Holder may declare the entire unpaid principal balance of this Governmental Lender Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender 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 the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder 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 Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

The Funding Loan, or any interest therein, and this Governmental Lender Note, shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Funding Lender for such purpose and which shall be open to inspection by the Governmental Lender. The Funding Loan, or any interest therein, and this Governmental Lender Note, is only transferable subject to and in accordance with the limitations set forth in the Funding Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note as of the date first set forth above.

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

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

Edwin M. Lee  
Mayor

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

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

Deputy City Attorney

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

\_\_\_\_\_, 20\_\_

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, Fifth Floor,  
San Francisco, CA 94103  
Attention: Director

Re: Loan in the Maximum Amount of \$[28,500,000] from CITIBANK, N.A. (the "Funding Lender") to the CITY AND COUNTY OF SAN FRANCISCO (the "Governmental Lender") under a Funding Loan Agreement dated as of [February 1, 2014] (the "Funding Loan Agreement") between the Funding Lender, [FISCAL AGENT] (the "Fiscal Agent") and the Governmental Lender

Ladies and Gentlemen:

The undersigned, as holder (the "Holder") of the above-referenced funding loan (the "Funding Loan") originated under the Funding Loan Agreement, or a participation therein and permitted under the Funding Loan Agreement, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Funding Loan. We are able to bear the economic risks of such investment.

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Funding Loan and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Funding Loan. The Holder acknowledges that it has not relied upon the addressee hereof for any information in connection with the Holder's purchase of the Funding Loan.

3. The Holder is a "qualified institutional buyer" (a "QIB") (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended) or an "accredited investor" as defined in Section 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (an "Accredited Investor"), or the custodian/trustee under a custody agreement/trust agreement, which provides that each beneficial owner of an interest in the Funding Loan must be (A) a QIB or (B) an Accredited Investor who will sign an investor letter to substantially the same effect as this Investor Letter.

4. The Holder acknowledges that it is purchasing the Funding Loan or a participation therein for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan; provided, however, that the Holder may, sell or assign the Funding Loan or participations in the Funding Loan as provided in and subject to the limitations in the Funding Loan Agreement.

5. The Holder understands that the Funding Loan is a limited obligation of the Governmental Lender, payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Funding Loan are expressly limited as set forth in the Funding Loan Agreement and related documents.

6. [FOR PURCHASE OF THE FUNDING LOAN: The Holder hereby agrees to become the "Funding Lender" under the Funding Loan Documents and assumes all of the obligations and agrees to perform all of the duties of the Funding Lender thereunder.]

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[ ], as Holder

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

## EXHIBIT C

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Funding Loan Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit C shall have the meanings given in this Funding Loan Agreement.

Section 1. Nondiscrimination; Penalties.

(i) Nondiscrimination. In the performance of this Funding Loan Agreement, the Funding Lender agrees not to discriminate against any employee, Governmental Lender employee working with the Funding Lender, applicant for employment with the Funding Lender, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) Subcontracts. The Funding Lender shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the Governmental Lender) and shall require all subcontractors to comply with such provisions. The Funding Lender's failure to comply with the obligations in this subsection shall constitute a material breach of this Funding Loan Agreement.

(iii) Nondiscrimination in Benefits. The Funding Lender does not as of the date of this Funding Loan Agreement and will not during the term of this Funding Loan Agreement, in any of its operations in San Francisco, on real property owned by the Governmental Lender, or where work is being performed for the Governmental Lender elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(iv) Condition to Contract. As a condition to this Funding Loan Agreement, the Funding Lender shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated

in this Section by reference and made a part of this Funding Loan Agreement as though fully set forth herein. The Funding Lender shall comply fully with and be bound by all of the provisions that apply to this Funding Loan Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Funding Lender understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Funding Loan Agreement may be assessed against the Funding Lender and/or deducted from any payments due the Funding Lender.

Section 2. Local Business Enterprise Utilization; Liquidated Damages.

(i) The LBE Ordinance. As a condition to this Funding Loan Agreement, the Funding Lender shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Funding Lender’s obligations or liabilities, or materially diminish Funding Lender’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Funding Lender’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Funding Lender’s obligations under this Agreement and shall entitle Issuer, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Funding Lender shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) Compliance and Enforcement. If Funding Lender willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Funding Lender shall be liable for liquidated damages in an amount equal to Funding Lender’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the Issuer’s Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Funding Lender authorized in the LBE Ordinance, including declaring the Funding Lender to be irresponsible and ineligible to contract with the Issuer for a period of up to five years or revocation of the Funding Lender’s LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Funding Lender acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Issuer upon demand. Funding Lender further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Funding Lender on any contract with Issuer.

Funding Lender agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 3. Prevailing Wages. Funding Lender understands and agrees that all provisions of section 1770, *et seq.*, of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are hereby incorporated into this contract. Funding Lender also understands and agrees that all provisions of sections 6.22E and 6.22F of the San Francisco Administrative Code are hereby incorporated into this contract.

Section 4. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the Governmental Lender urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Governmental Lender urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing this Funding Loan Agreement, the person executing this Funding Loan Agreement on behalf of the Funding Lender acknowledges and agrees that he or she has read and understood this Section.

Section 5. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the Governmental Lender urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 6. Drug-Free Workplace Policy. The Funding Lender acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Governmental Lender premises. The Funding Lender agrees that any violation of this prohibition by the Funding Lender, its employees, agents or assigns will be deemed a material breach of this Funding Loan Agreement.

Section 7. Compliance with Americans with Disabilities Act. The Funding Lender acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Funding Lender shall provide the services specified in this Funding Loan Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Funding Lender agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Funding Loan Agreement and further agrees that any violation of this prohibition on the part of the Funding Lender, its employees, agents or assigns will constitute a material breach of this Funding Loan Agreement.

Section 8. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the Governmental Lender and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision



requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Section 9. Limitations on Contributions. Through execution of this Funding Loan Agreement, the Funding Lender acknowledges that it is familiar with Section 1.126 of the Governmental Lender's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Governmental Lender for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Funding Lender acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Funding Lender further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Funding Lender's board of directors; the Funding Lender's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Funding Lender; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Funding Lender. Additionally, the Funding Lender acknowledges that the Funding Lender must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. The Funding Lender further agrees to provide to the Governmental Lender the names of each person, entity or committee described above.

Section 10. Requiring Minimum Compensation for Covered Employees. The Funding Lender agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Funding Loan Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of the Funding Lender's obligations under the MCO is set forth in this Section. The Funding Lender is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(i) The MCO requires the Funding Lender to pay the Funding Lender's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and the Funding Lender is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Funding Lender shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is the Funding Lender's obligation to ensure that any

subcontractors of any tier under this Funding Loan Agreement comply with the requirements of the MCO. If any subcontractor under this Funding Loan Agreement fails to comply, the Governmental Lender may pursue any of the remedies set forth in this Section against the Funding Lender.

(ii) The Funding Lender shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(iii) The Funding Lender shall maintain employee and payroll records as required by the MCO. If the Funding Lender fails to do so, it shall be presumed that the Funding Lender paid no more than the minimum wage required under State law.

(iv) The Governmental Lender, upon reasonable notice to the Funding Lender, is authorized to inspect the Funding Lender's job sites during normal business hours, conduct interviews with employees and conduct audits of the Funding Lender.

(v) The Funding Lender's commitment to provide the Minimum Compensation is a material element of the Governmental Lender's consideration for this Funding Loan Agreement. The Governmental Lender in its sole discretion shall determine whether such a breach has occurred. The Governmental Lender and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Funding Lender fails to comply with these requirements. The Funding Lender agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the Governmental Lender and the public will incur for the Funding Lender's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(vi) The Funding Lender understands and agrees that if it fails to comply with the requirements of the MCO, the Governmental Lender shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Funding Loan Agreement for violating the MCO, the Funding Lender fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Funding Lender fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Governmental Lender shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the Governmental Lender.

(vii) The Funding Lender represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(viii) If the Funding Lender is exempt from the MCO when this Funding Loan Agreement is executed because the cumulative amount of agreements with the Governmental Lender for the fiscal year is less than \$25,000, but the Funding Lender later enters into an

agreement or agreements that cause the Funding Lender to exceed that amount in a fiscal year, the Funding Lender shall thereafter be required to comply with the MCO under this Funding Loan Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Funding Lender and the Governmental Lender to exceed \$25,000 in the fiscal year.

Section 11. Requiring Health Benefits for Covered Employees. The Funding Lender agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Funding Loan Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Funding Loan Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(i) For each Covered Employee, the Funding Lender shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Funding Lender chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(ii) Notwithstanding the above, if the Funding Lender is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (i) above.

(iii) The Funding Lender's failure to comply with the HCAO shall constitute a material breach of this Funding Loan Agreement. The Governmental Lender shall notify the Funding Lender if such a breach has occurred. If, within 30 days after receiving Governmental Lender's written notice of a breach of this Funding Loan Agreement for violating the HCAO, the Funding Lender fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Funding Lender fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Governmental Lender shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the Governmental Lender.

(iv) Any Subcontract entered into by the Funding Lender shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Funding Lender shall notify Governmental Lender's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. The Funding Lender shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Governmental Lender may pursue the remedies set forth in this Section against the Funding Lender based on the Subcontractor's failure to comply, provided that the Governmental Lender

has first provided the Funding Lender with notice and an opportunity to obtain a cure of the violation.

(v) The Funding Lender shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the Governmental Lender with regard to the Funding Lender's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(vi) The Funding Lender represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(vii) The Funding Lender shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the Agreement.

(viii) The Funding Lender shall keep itself informed of the current requirements of the HCAO.

(ix) The Funding Lender shall provide reports to the Governmental Lender in accordance with any reporting standards promulgated by the Governmental Lender under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(x) The Funding Lender shall provide the Governmental Lender with access to records pertaining to compliance with HCAO after receiving a written request from the Governmental Lender to do so and being provided at least ten business days to respond.

(xi) The Funding Lender shall allow the Governmental Lender to inspect the Funding Lender's job sites and have access to the Funding Lender's employees in order to monitor and determine compliance with HCAO.

(xii) The Governmental Lender may conduct random audits of the Funding Lender to ascertain its compliance with HCAO. The Funding Lender agrees to cooperate with the Governmental Lender when it conducts such audits.

(xiii) If the Funding Lender is exempt from the HCAO when this Funding Loan Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Funding Lender later enters into an agreement or agreements that cause the Funding Lender's aggregate amount of all agreements with the Governmental Lender to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Funding Lender and the Governmental Lender to be equal to or greater than \$75,000 in the fiscal year.

Section 12. Prohibition on Political Activity with Governmental Lender Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Funding Lender may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided

under this Funding Loan Agreement. The Funding Lender agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Governmental Lender's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Funding Lender violates the provisions of this Section, the Governmental Lender may, in addition to any other rights or remedies available hereunder, (i) terminate this Funding Loan Agreement, and (ii) prohibit the Funding Lender from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Funding Lender's use of profit as a violation of this Section.

Section 13. Protection of Private Information. The Funding Lender has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Funding Lender agrees that any failure of the Funding Lender to comply with the requirements of Section 12M.2 of Chapter 12M shall be a material breach of this Funding Loan Agreement. In such an event, in addition to any other remedies available to it under equity or law, the Governmental Lender may terminate this Funding Loan Agreement, bring a false claim action against the Funding Lender pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Funding Lender.

Section 14. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the Governmental Lender's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti, unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the Governmental Lender and its residents, and to prevent the further spread of graffiti.

The Funding Lender shall remove all graffiti from any real property owned or leased by the Funding Lender in the City and County of San Francisco within forty eight (48) hours of the earlier of the Funding Lender's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require the Funding Lender to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987

*et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*).

Any failure by the Funding Lender to comply with this section of this Funding Loan Agreement shall constitute a material breach of this Funding Loan Agreement.

Section 15. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Governmental Lender for penalties set forth in that Section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Governmental Lender if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Governmental Lender a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Governmental Lender; (c) conspires to defraud the Governmental Lender by getting a false claim allowed or paid by the Governmental Lender; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Governmental Lender; or (e) is a beneficiary of an inadvertent submission of a false claim to the Governmental Lender, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Governmental Lender within a reasonable time after discovery of the false claim.

Section 16. Conflict of Interest. Through its execution of this Funding Loan Agreement, the Funding Lender acknowledges that it is familiar with the provision of Section 15.103 of the Governmental Lender's Charter, Article III, Chapter 2 of Governmental Lender's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the Governmental Lender if it becomes aware of any such fact during the term of this Funding Loan Agreement.

Section 17. Food Service Waste Reduction Requirements. The Funding Lender agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Funding Loan Agreement as though fully set forth. This provision is a material term of this Funding Loan Agreement. By entering into this Funding Loan Agreement, the Funding Lender agrees that if it breaches this provision, the Governmental Lender will suffer actual damages that will be impractical or extremely difficult to determine; further, the Funding Lender agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the Governmental Lender will incur based on the violation, established in light of the circumstances existing at the time this Funding Loan Agreement was made. Such amount shall not be considered a penalty, but

rather agreed monetary damages sustained by the Governmental Lender because of the Funding Lender's failure to comply with this provision.

Section 18. Proprietary or Confidential Information of Governmental Lender. The Funding Lender understands and agrees that, in the performance of the work or services under this Funding Loan Agreement or in contemplation thereof, the Funding Lender may have access to private or confidential information which may be owned or controlled by Governmental Lender and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Governmental Lender. The Funding Lender agrees that all information disclosed by Governmental Lender to the Funding Lender shall be held in confidence and used only in the performance of this Funding Loan Agreement. The Funding Lender shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Section 19. Earned Income Credit (EIC) Forms. Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. The Funding Lender shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Funding Loan Agreement becomes effective (unless the Funding Lender has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Funding Lender; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Funding Loan Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Funding Lender of the terms of this Funding Loan Agreement. If, within thirty days after the Funding Lender receives written notice of such a breach, the Funding Lender fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Funding Lender fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Governmental Lender may pursue any rights or remedies available under this Funding Loan Agreement or under applicable law. Any Subcontract entered into by the Funding Lender shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section. Capitalized terms used in this Section and not defined in this Funding Loan Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**EXHIBIT D**

**FORM OF WRITTEN REQUISITION  
OF THE BORROWER – COSTS OF FUNDING FUND**

To: [FISCAL AGENT], as Fiscal Agent (the “Fiscal Agent”) under that certain Funding Loan Agreement, dated as of [February 1, 2014], among Citibank, N.A., as Funding Lender, the City and County of San Francisco, as Governmental Lender, and the Fiscal Agent (the “Funding Loan Agreement”).

1. You are requested to disburse funds from the Costs of Funding Fund pursuant to Section 7.6 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement.

*[Signatures on page to follow]*



Dated: \_\_\_\_\_

**BORROWER:**

Carroll Avenue Senior Homes, L.P.,  
a California limited partnership

By: Carroll Avenue Senior Homes MBS GP, Inc.,  
a Missouri corporation,  
its co-general partner

By: \_\_\_\_\_  
Michael Duffy, Vice President

By: BHPMSS Bayview Seniors LLC,  
a California limited liability company,  
its managing general partner

By: Bayview Hunters Point Multipurpose Senior  
Services, Inc., a California nonprofit public  
benefit corporation, its sole manager

By: \_\_\_\_\_  
Cathy Davis, Executive Director

## SCHEDULE I

## **EXHIBIT E**

### **FORM OF WRITTEN REQUISITION OF THE BORROWER**

To: [FISCAL AGENT], as Fiscal Agent (the “Fiscal Agent”) under that certain Funding Loan Agreement, dated as of [February 1, 2014], among Citibank, N.A., as Funding Lender, the CITY AND COUNTY OF SAN FRANCISCO, as Governmental Lender, and the Fiscal Agent (the “Funding Loan Agreement”).

1. You are requested to disburse funds from the Project Fund pursuant to Section 7.7 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) such requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on the requisition has been incurred in or about the construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) such requisition contains no items representing any Costs of Issuance or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) not less than 95% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Governmental Lender Note plus (B) all amounts allocated to the Governmental Lender Note previously disbursed from the Project Fund, have been or will be applied by the Borrower to pay Qualified Project Costs;

(vi) as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement; and

(vii) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby among the sources for payment.

3. The undersigned has provided you with this Requisition an endorsement to the mortgagee title insurance policy delivered to the Fiscal Agent at closing increasing the affirmative mechanics and materialmen's lien coverage to an amount equal to the aggregate amount paid out of the Project Fund including the amount to be paid under the requisitions then being submitted, together with any lien waivers or reports with respect to title to the Project required for the issuance of such endorsement.

Dated: \_\_\_\_\_

**BORROWER:**

Carroll Avenue Senior Homes, L.P.,  
a California limited partnership

By: Carroll Avenue Senior Homes MBS GP, Inc.,  
a Missouri corporation,  
its co-general partner

By: \_\_\_\_\_  
Michael Duffy, Vice President

By: BHPMSS Bayview Seniors LLC,  
a California limited liability company,  
its managing general partner

By: Bayview Hunters Point Multipurpose Senior  
Services, Inc., a California nonprofit public  
benefit corporation, its sole manager

By: \_\_\_\_\_  
Cathy Davis, Executive Director

Approved:

Citibank, N.A., Funding Lender

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

[Name]

[Title]