

LOAN AGREEMENT

This Loan Agreement (this “**Agreement**”), dated as of [April 1, 2021], is entered into by and between the City and County of San Francisco, a political subdivision of the State of California (the “**City**”) and California Rebuilding Fund, LLC, a Delaware public benefit limited liability company (“**Borrower**”).

WHEREAS, Borrower is a wholly owned subsidiary of Kiva Microfunds, a California public benefit corporation (the “**Member**”), a tax-exempt charity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and classified as a public charity under Section 509(a)(1) of the Code;

WHEREAS, Borrower was organized for the exclusive charitable purpose of addressing the capital needs of economically vulnerable small businesses located in disadvantaged communities in the State of California that historically have had less access to capital, as they attempt to reopen and recover from the COVID-19 health and economic crisis (the “**Public Benefit**”);

WHEREAS, Borrower is seeking a “program-related investment loan” as defined in Section 4944(c) of the Code, from Foundation on concessionary terms for purposes of the Public Benefit, in furtherance of the exempt purposes of the Borrower and the Foundation described in Section 170(c)(2)(B) of the Code; and

WHEREAS, Foundation is willing to make such loan as a “program-related investment,” as defined in Section 4944(c) of the Code, for use under the [*guarantee lending facility or blended facility*]¹ (the “**Supported Facility**”), subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises set forth herein, the parties hereto agree as follows:

ARTICLE I THE PRI LOAN

SECTION 1.1 Commitment to Lend. At the Closing (as defined below), the City shall lend to Borrower and Borrower shall borrow from the City the principal amount of four million two hundred thousand (\$4,200,000) (the “**PRI Loan**”) subject to the terms and conditions set forth in this Agreement.

SECTION 1.2 Note; Maturity. The City’s PRI Loan to Borrower hereunder shall be evidenced by a single Note (in the form set forth in Appendix A, the “**Note**”) dated as of the Closing and shall be due and payable on the date that is six (6) months following the Maturity Date (as defined the Supported Facility); provided, however, that the Borrower shall only be required to repay the PRI Loan to the City after the payment in full of all amounts set forth in Section 6.3(a)

¹ Note to Draft: Reference to applicable credit agreement that the grant is being applied to be inserted.

to Section 6.3(e) of the Supported Facility; provided, further, that the City shall have the right to waive the Borrower's repayment obligation under this Agreement.

SECTION 1.3 Interest Rate. The PRI Loan made hereunder shall bear interest on the principal balance outstanding from time to time from the date such PRI Loan is made until it is repaid in full or forgiven, at a rate equal to one and one-half percent (1.5%) per annum.

SECTION 1.4 Prepayments. Borrower may prepay the PRI Loan in whole or in part, without premium or penalty, upon three (3) business days' notice to the City, by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment.

SECTION 1.5 Security. The PRI Loan will be an unsecured, full recourse obligation.

ARTICLE II

CONDITIONS TO BORROWING; CLOSING

SECTION 2.1 Conditions. The obligation of the City to make the PRI Loan hereunder is subject to satisfaction by Borrower of each of the following conditions:

- (a) receipt by the City of this Agreement and the Note duly signed by an authorized officer of Borrower;
- (b) receipt by the Foundation of copies of certificates of good standing issued by the jurisdiction of organization of the Borrower; and
- (c) receipt by the Foundation of such other documents as the Foundation may reasonably require.

SECTION 2.2 Closing. The closing of the PRI Loan (the "**Closing**") shall take place simultaneously with the execution of this Agreement via the electronic exchange of signature pages, or at such other time or place as the parties may mutually determine. At the Closing, if Borrower satisfies the foregoing conditions, Foundation shall advance the PRI Loan proceeds to Borrower by check or wire transfer.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as of the date of this Agreement and as of the Closing that:

SECTION 3.1 Corporate Existence; Tax Status. Borrower (i) is a public benefit limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, (ii) is duly authorized to do business in every jurisdiction in which it conducts operations, (iii) is a "disregarded entity" that is not treated as a separate legal entity from Member for U.S. federal income tax purposes pursuant to Treasury Regulation Section 301.7701-

3(b)(1)(ii); and (iv) has not made an election on IRS Form 8832 or any successor form to classify Borrower as an association taxable as a corporation pursuant to Treasury Regulation Section 301.7701-3(b)(1)(I). Member (x) is recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Code, (y) is not a private foundation as defined in Section 509(a) of the Code, and (z) is the sole member of Borrower.

SECTION 3.2 Authorization. The execution, delivery and performance by Borrower of this Agreement and the Note and the Borrower's obligations hereunder and thereunder are within Borrower's power, have been duly authorized by all necessary action, require no action or approval by any governmental body or agency, and do not contravene or constitute a default under any provision of applicable law or regulation, or of the certificate of formation or bylaws of Borrower, or of any contract to which Borrower is a party, or of any judgment, decree, instrument or agreement, including without limitation any other loan agreement, which is binding upon Borrower.

SECTION 3.3 Binding Effect. This Agreement constitutes a valid and binding agreement of Borrower, and the Note, when executed and delivered in accordance with this Agreement, will constitute a valid and binding obligation of Borrower.

SECTION 3.4 Litigation. There is no action, suit, investigation or proceeding pending or, to the best of Borrower's knowledge, threatened, by or before any court or governmental or administrative body or agency which would materially adversely affect the ability of Borrower to perform its obligations under this Agreement or the Note.

SECTION 3.5 Financial Statements. The most recent unaudited financial statements of Borrower, for [date], copies of which have been presented to Foundation, fully and fairly depict the financial condition of Borrower as of the date of those statements, and there have been no changes in the financial condition of Borrower since the date of those statements which would materially adversely affect the ability of Borrower to enter into, execute and deliver, and perform its obligations under this Agreement or the Note.

ARTICLE VI COVENANTS

Borrower agrees that, so long as any amount under the Note remains outstanding and unpaid:

SECTION 4.1 Information. Borrower will deliver to Foundation:

- (a) Quarterly financial statements shall be provided within 90 days of the end of each quarter.
- (b) Annual financial statements shall be provided within 120 days of the end of the year.

(c) Annual narrative report from the Borrower describing the use of the PRI Loan and how the PRI Loan furthers the Public Benefit. This narrative shall be provided within 120 days of the end of the year.

(d) Any other information respecting the operations, activities and financial condition of the Borrower that the Foundation may reasonably request.

SECTION 4.2 Use of Proceeds.

(a) The Borrower shall use the proceeds of the PRI Loan made under this Agreement, and any earnings therefrom, solely for the purpose of the Public Benefit and the Supported Facility. Use of the PRI Loan proceeds for the Public Benefit is in furtherance of the tax-exempt purposes set forth in the third recital clause at the beginning of this Agreement.

(b) The Borrower shall not use any of the PRI Loan proceeds, or earnings therefrom, (i) to engage, directly or indirectly, in any activity described in Section 170(c)(2)(D) of the Code, (ii) in a manner that would constitute a “taxable expenditure” within the meaning of Section 4945(d) of the Code if such proceeds, or any earnings therefrom, were so applied by a “private foundation” described in Section 509(a) of the Code, (iii) to carry on propaganda, or otherwise attempt, to influence legislation (within the meaning of Section 4945(d)(1) of the Code), (iv) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code), (v) to participate in or intervene in (including the publishing or distributing of any statements) any political campaign on behalf of (or in opposition to) any candidate for public office, (vi) to make any grant that does not comply with the requirements of Section 4945(d)(3) or 4945 (d)(4) of the Code, nor (vii) for or to further, directly or indirectly, any purpose that is not for charitable, scientific, or educational purposes within the meaning of Section 170(c)(2)(B) of the Code.

SECTION 4.3 Corporate Standing; Tax-Exempt Status; Compliance with Laws. Borrower shall remain a Delaware public benefit limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware. Borrower will comply with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or could not reasonably be expected to have a material adverse effect on the Borrower. Member will remain the sole member of Borrower, Borrower shall remain a “disregarded entity” that is not a separate legal entity from Member for U.S. federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3(b)(1)(ii), and Borrower shall not make an election on IRS Form 8832 or any successor form to classify Borrower as an association taxable as a corporation pursuant to Treasury Regulation Section 301.7701-3(b)(1)(I).

ARTICLE V MISCELLANEOUS

SECTION 5.1 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or any equivalent means of communication) and shall be given to each party as set forth below:

To Borrower:

California Rebuilding Fund, LLC
c/o Kiva Microfunds
986 Mission Street, 4th Floor
San Francisco, CA 94103
Attn:
Phone:

To the City:

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
1 SOUTH VAN NESS AVE. 5TH FLOOR
SAN FRANCISCO, CA. 94103
Attn:
Phone:

SECTION 5.2 No Waivers. No failure or delay by Foundation in exercising any right, power or privilege hereunder or under the Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof. The rights and remedies provided for in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 5.3 Expenses. Each party shall pay all of its own fees and expenses in connection with the preparation of this Agreement.

SECTION 5.4 Amendments and Waivers. Any provision of this Agreement or the Note may be amended or waived only if such amendment or waiver is in writing and is signed by Borrower and Foundation.

SECTION 5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or otherwise transfer any of its rights under this Agreement, without the prior consent of Foundation.

SECTION 5.6 Applicable Law. This Agreement and the Note shall be construed in accordance with and governed by the law of the State of Delaware applicable to contracts to be wholly performed within such State.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereto have executed, or have caused this Agreement to be executed by their respective authorized officers, as of the day and year first above written.

BORROWER:
CALIFORNIA REBUILDING FUND, LLC

By: _____

Name:

Title:

LENDER:
CITY AND COUNTY OF SAN FRANCISCO

By: _____

Name:

Title:

Appendix A
FORM OF NOTE

\$4,200,000
[DATE], 2021

FOR VALUE RECEIVED, the undersigned, California Rebuilding Fund, LLC (the “*Maker*”), a Delaware public benefit limited liability company, promises to pay to the order of the City and County of San Francisco (the “*Payee*”), the principal sum of four million two hundred thousand dollars (\$4,200,000), with simple interest on the outstanding principal amount at the rate of one and one-half percent (1.5%) per annum, computed on the basis of the actual number of days elapsed and a year of 365 days. This Note is issued pursuant to that certain Loan Agreement, dated [___], 2021 by and among the Maker and the Payee (as may be amended from time to time, the “*Agreement*”) and is entitled to the benefits of and is subject to the terms contained in that Agreement. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Subject to Section 1.2 of the Agreement, the outstanding principal amount and unpaid accrued interest on this Note shall be due and payable by the Maker on or after the Maturity Date.

The Maker hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

This Note may be prepaid at any time or from time to time, in whole, or in part, without penalty or premium, provided that the Maker shall pay all accrued but unpaid interest up to the date of any such prepayment.

This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.

This Note shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Maker has executed this Note the day and year first above written.

CALIFORNIA REBUILDING FUND, LLC

By: _____