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**FUNDING LOAN AGREEMENT**

**by and among**

**BANK OF AMERICA, N.A.,  
as Funding Lender**

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

**and**

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Fiscal Agent**

**dated as of May 1, 2024**

**relating to:**

**\$95,866,019**

**City and County of San Francisco  
Multifamily Housing Revenue Note  
(Transbay Block 2 East), Series 2024B-1**

**\$19,979,199**

**City and County of San Francisco  
Multifamily Housing Revenue Note  
(Transbay Block 2 East), Series 2024B-2 (Taxable)**

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## FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of May 1, 2024 (this “Funding Loan Agreement”), is entered into by BANK OF AMERICA N.A., a national banking association organized and existing under the laws of the United States of America (together with any successor hereunder, the “Funding Lender”), U.S. Bank Trust Company, National Association, a national banking association organized and operating under the laws of the United States of America, having a corporate trust office in San Francisco, California, as Fiscal Agent (together with any successor or assign, the “Fiscal Agent”) and the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, a municipal corporation duly organized and existing pursuant to its charter and the laws and constitution of the State of California (together with its successors and assigns, the “Governmental Lender”).

### RECITALS :

WHEREAS, the Governmental Lender is authorized to provide financing for multifamily rental housing pursuant to and in accordance with Sections 1.101 and 9.107 of the Charter of the City and County of San Francisco, California, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco, California and, to the extent applicable, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended (collectively, the “Act”).

WHEREAS, the Governmental Lender is authorized: (a) to make loans to provide financing for residential rental developments located within the City and County of San Francisco, California (the “City”) and intended to be occupied, in whole or in part by persons of low and very-low 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 such indebtedness of the Governmental Lender; and

WHEREAS, Transbay 2 Family, L.P., a California limited partnership (the “Borrower”), has requested that the Governmental Lender enter into this Funding Loan Agreement under which the Funding Lender will advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and the Governmental Lender will apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition and construction of a multifamily residential rental housing development located within the City, known as Transbay Block 2 East (the “Project”); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender, the Fiscal Agent and the Borrower will enter into a Borrower Loan Agreement of even date herewith (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 will execute and deliver to the Governmental Lender its Promissory Notes (the “Borrower Notes”) and the obligations of the Borrower under the Borrower Notes will be secured by a lien on and security interest in the Project pursuant to a Construction and Permanent Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (Residential), dated as of May \_\_, 2024, made by the Borrower in favor of the Governmental Lender, and also by a [Construction and Permanent

Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (Commercial), dated as of May \_\_\_, 2024], made by Transbay 2 Family Commercial LLC, a California limited liability company, in favor of the Governmental Lender (together, and as each may be amended, restated and/or supplemented from time to time, the "Security Instrument"), each assigned by the Governmental Lender without recourse 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 (Transbay Block 2 East), Series 2024B-1 (the "Tax-Exempt Governmental Lender Note") and its Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-2 (Taxable) (the "Taxable Governmental Lender Note" and, together with the Tax-Exempt Governmental Lender Note, the "Governmental Lender Notes") evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement; and

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a "conduit lender" and the Funding Loan and the Governmental Lender Notes will be limited obligations of the Governmental Lender as described in Section 5.1 hereof; and

WHEREAS, the Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement; and

WHEREAS, all things necessary to make this Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and issuance of the Governmental Lender Notes, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the premises 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, the following capitalized terms shall have the following meanings:

"Act" shall have the meaning assigned to such term in the recitals above.

"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.

"Approved Transferee" means (a) a "qualified institutional buyer" ("QIB") as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act") that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (b)

an affiliate of the Funding Lender, (c) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs, (d) CCRC, or (e) a nonprofit corporation or nonprofit organization, all of whose shareholders or members are QIBs, and which invests in obligations of the same type as the Governmental Lender Notes as a principal aspect of its business.

“Authorized Amount” shall mean \$115,845,218, the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

“Authorized Representative” shall mean (a) when used with respect to the Governmental Lender, the Mayor, the Director of the Mayor’s Office of Housing and Community Development, the Director of Housing Development and the Deputy Director of the Mayor’s Office of Housing and Community Development of the Governmental Lender and such additional Person or Persons, if any, duly designated by any of the foregoing in writing to act on behalf of the Governmental Lender, as evidenced by a written certificate furnished to the Funding Lender, the Fiscal Agent and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender, which certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of such Authorized Representative; (b) when used with respect to the Borrower, any “Authorized Borrower Representative” as defined in the Borrower Loan Agreement; (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent; (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf; and (e) when used with respect to the Funding Lender, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender.

“Borrower” shall mean Transbay 2 Family, L.P., a California limited partnership, and its successors and assigns.

“Borrower Controlling Entity” shall mean any general partner or managing general partner of the Borrower.

“Borrower Equity Account” means the Borrower Equity Account of the Project Fund established under Section 7.3(b)(iii) hereof.

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

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, of even date herewith, among the Governmental Lender, the Fiscal Agent 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” as set forth in Section 7.1 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 \$115,845,218, the maximum principal amount of the Borrower Loan.

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

“Borrower Loan Payments” shall mean the monthly loan payments by the Borrower payable pursuant to the Borrower Notes.

“Borrower Loan Purchase Option” shall have the meaning given such term in Section 1.7 of the Loan Purchase Agreement.

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

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

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

“Capitalized Interest Account” means the Capitalized Interest Account of the Project Fund established under Section 7.3(b)(ii) hereof.

“CCRC” shall mean (a) the California Community Reinvestment Corporation, or (b) one of the following entities in connection with a permitted assignment by the California Community Reinvestment Corporation under the Loan Purchase Agreement, and after Conversion: (i) Fannie Mae or Freddie Mac, (ii) a member bank of California Community Reinvestment Corporation or (iii) a fund established and managed by California Community Reinvestment Corporation (or by a single member limited liability company in which California Community Reinvestment Corporation is the sole member) and in which all of the investors in such fund are banks, insurance companies or other financial institutions (or affiliates of such entities) and each of which is a qualified institution buyer (as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof) (a “QIB”) or an “accredited investor,” as defined in Rule 501 promulgated under the Securities Act of 1933, as amended (an “accredited investor”); or (iv) a QIB or an accredited investor.

“City” means the City and County of San Francisco, California.

“Closing Costs Fund” shall mean the fund of that name established under Section 7.3(d) hereof.

“Closing Date” shall mean May \_\_\_\_, 2024, the date that initial Funding Loan proceeds are disbursed hereunder.

“Closing Flow of Funds Memorandum” means the Closing Flow of Funds Memorandum provided by the Governmental Lender’s Municipal Advisor on the Closing Date.

“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.

“Completion Deadline” shall have the meaning given such term in the Construction Disbursement Agreement.

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



“Construction Disbursement Agreement” means that certain Construction Disbursement Agreement, dated as of May \_\_\_, 2024, between the Funding Lender, as agent for the Governmental Lender, and the 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 Fiscal Agent for disbursement 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.

“Control” shall mean, with respect to any Person, either (a) ownership directly or through other entities of more than fifty percent (50%) of all beneficial equity interest in such Person, or (b) 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.

“Conversion Date” means the date on which the registered owner of the Tax-Exempt Governmental Lender Note becomes CCRC by reason of the assignment of the Tax-Exempt Governmental Lender Note and the Borrower Loan Documents from the Initial Funding Lender to CCRC on such date.

“Costs of Funding” shall have the meaning given such term in the Borrower Loan Agreement.

“Costs of Funding Deposit” shall have the meaning given such term in the Borrower Loan Agreement.

“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” as defined in the applicable Funding Loan Document.

“Draw-Down Notice” shall mean a notice described in Section 2.1 hereof regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

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

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

“Expense Fund” shall mean the fund of that name established under Section 7.3(c) hereof.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Obligation-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Department of the Treasury, Bureau of Public Debt, or (d) the investment is the Local Agency Investment Fund of the State, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

“Fiscal Agent” shall mean U.S. Bank Trust Company, National Association, as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent Fee” shall mean the annual fee of the Fiscal Agent in the amount of \$3,000 annually, payable in annual installments in arrears by the Borrower to the Fiscal Agent commencing on the first anniversary of the Closing Date and then on each May 31<sup>st</sup> thereafter.

“Fitch” shall mean Fitch Ratings, Inc.

“Funding Lender” shall mean (a) initially, Bank of America, N.A., a national banking association, (b) on and after the Conversion Date, CCRC, and (c) any successor to either thereof under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, as executed on the Closing Date and as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental hereto entered into pursuant to Section 10.1 hereof.

“Funding Loan Documents” shall mean this Funding Loan Agreement, the Borrower Loan Documents, the Regulatory Agreement, the Tax Certificate, all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and all amendments, modifications, renewals and substitutions of any of the foregoing.

“Funding Loan Payment Fund” shall mean the fund of that name established under Section 7.3(a) hereof.

“Government Obligations” shall mean noncallable, nonprepayable (a) direct, general obligations of the United States of America, or (b) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

“Governmental Lender” shall mean the City and County of San Francisco, California, and its successors and assigns.

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

“Initial Funding Lender” shall mean Bank of America, N.A., a national banking association, or any of its successors or assigns.

“Loan Purchase Agreement” shall mean the Loan Purchase Agreement, dated as of May 1, 2024, among the Borrower, Initial Funding Lender and CCRC, pursuant to which and subject to the terms and conditions therein, CCRC has agreed to purchase up to \$[1,723,000] principal amount of the Funding Loan on the Conversion Date.

“Maturity Date” shall mean, (i) with respect to the Tax-Exempt Governmental Lender Note, \_\_\_\_\_ 1, 20\_\_\_\_, and (ii) with respect to the Taxable Governmental Lender Note, \_\_\_\_\_ 1, 20\_\_\_\_.

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

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Note Proceeds Account” means the Note Proceeds Account of the Project Fund established under Section 7.3(b)(i) hereof.

“Noteowner” or “owner of the Governmental Lender Notes” means the owner, or as applicable, collectively the owners, of the Governmental Lender Notes as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.4(a) hereof.

“Ongoing Governmental Lender Fee” shall mean the annual administrative fee of the Governmental Lender due and payable by the Borrower pursuant to Section 17 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 Tax-Exempt Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean any of the following (including any funds comprised of the following, which may be funds maintained or managed by the Fiscal Agent and its affiliates), but only to the extent that the same are acquired at Fair Market Value:

(a) direct and general obligations of the United States of America fully and unconditionally guaranteed as to the timely payment of principal and interest;

(b) obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are fully unconditionally guaranteed by the full faith and credit of the United States of America;

(c) senior debt obligations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, each a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns;

(d) demand deposits or time deposits with, or certificates of deposit (including those placed by a third party pursuant to a separate agreement between the Borrower and the Fiscal Agent (and approved by the Funding Lender)), bank deposit products, trust funds, trust accounts, interest bearing deposits, interest bearing money market accounts, overnight bank deposits or bankers’ acceptances issued by the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency;

(e) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor, custodian, transfer agent or provides other services to such mutual fund and receives and retains a

fee for providing such services) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (i) direct obligations of the government of the United States of America, or (ii) tax-exempt obligations;

(f) (i) tax-exempt obligations rated in the highest short-term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory, transfer agency, custodial or other services to the fund;

(g) the Pooled Investment Fund of the City; or

(h) any other investments approved in writing by an Authorized Representative of the Funding Lender, with the written consent of the Governmental Lender.

For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

"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 Notes, consisting of the following: (a) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts owed and available to, or received by, the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Borrower Loan, the Project and the Funding Loan Documents, including all Borrower Loan Payments owing under the Borrower Loan Agreement and the Borrower Notes 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 (b) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon (except any amounts on deposit in the Expense Fund, the Rebate Fund and Closing Costs Fund).

"Prepayment Premium" shall mean (a) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Notes (including any Prepayment Premium as set forth in the Borrower Notes); or, as applicable, (b) any premium payable on the Governmental Lender Notes pursuant to this Funding Loan Agreement.

“Potential Default” shall mean the occurrence of an event which, under the Borrower Loan Agreement, would, but for the giving of notice or the passage of time, be an Event of Default thereunder.

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

“Project Fund” shall mean the fund of that name established under Section 7.3(b) hereof.

“Purchase Date” means the date on which CCRC purchases the Funding Loan from the Initial Funding Lender upon satisfaction of the conditions set forth in the Loan Purchase Agreement.

“Qualified Project Costs” shall have the meaning given to such term in the Regulatory Agreement.

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

“Rebate Amount” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

“Rebate Analyst” shall mean a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Borrower Loan Agreement.

“Rebate Fund” shall mean the fund of that name established under Section 7.3(e) hereof.

“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 executed on the Closing Date, and as it may thereafter be amended or modified in accordance with its terms.

“Required Transferee Representations Letter” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibits B-1 and B-2, as applicable.

“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 services department (or any successor group) of the Fiscal Agent, including any managing director, director, vice president, assistant vice president, assistant secretary, senior associate, associate or any other officer or assistant officer of the Fiscal Agent within the Fiscal Agent’s office described in Section 12.1 hereof or a successor corporate trust office (the “Corporate Trust Office”) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Funding Loan Agreement.

“Securities Act” shall mean the United States 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 Notes and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean, collectively, (i) the Construction and Permanent Leasehold Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing (Residential), dated as of May \_\_\_, 2024, made by the Borrower in favor of the Governmental Lender, as assigned without recourse to the Funding Lender, and (ii) the Construction and Permanent Leasehold Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing (Commercial), dated as of May \_\_\_, 2024, made by Transbay 2 Family Commercial LLC, a California limited liability company, in favor of the Governmental Lender, as assigned without recourse to the Funding Lender.

“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 to be entered into between the Funding Lender and the Servicer. 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 the Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“Stabilization Date” shall have the meaning given such term in the Construction Disbursement Agreement.

“Stabilization Deadline” shall have the meaning given such term in the Construction Disbursement Agreement.

“Standard & Poor’s” or “S&P” shall mean S&P Global Ratings, a Standard & Poor’s Financial Services LLC business division, or its successors.

“State” shall mean the State of California.

“Supplemental Loan Agreement” means that certain Supplemental Agreement, dated as of May \_\_\_, 2024, between Borrower and CCRC.

“Tax Certificate” shall mean, collectively, (i) the Certificate as to Arbitrage executed by the Governmental Lender and the Borrower on the Closing Date, and (ii) the Certificate Regarding Use of Proceeds, executed by the Borrower on the Closing Date.

“Tax Counsel” shall mean (a) Jones Hall, A Professional Law Corporation, (b) the Law Offices of Alexis S.M. Chiu, or (c) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as a municipal bond attorney in The Bond Buyer’s Municipal Marketplace.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Tax-Exempt Governmental Lender Note constitutes a valid and binding obligation of the Governmental Lender and that, under existing law, the interest on the Tax-Exempt Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to customary exceptions).

“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, in and of itself, adversely affect any exclusion of interest on the Tax-Exempt Governmental Lender Note from gross income for purposes of federal income taxation then in effect (subject to customary exceptions).

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

“Unassigned Rights” shall mean all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants under the Borrower Loan Documents or the Funding Loan Documents: (a) (i) to be held harmless and indemnified, (ii) to be paid its fees and expenses, (iii) to give or withhold consent to amendments, changes, modifications and alterations, (iv) to have access to the Project and Project records, (v) to give and receive notices, (vi) to enforce notice and reporting requirements and restrictions on transfer of ownership, (vii) to inspect and audit the books, records and premises of the Borrower and of the Project, and (viii) to specifically enforce the Borrower’s covenants to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the City); (b) the Governmental Lender’s rights under the Regulatory Agreement, including but not limited to, rights to indemnification, and reimbursement and payment of its fees, costs and expenses; and (c) the right to enforce all of the foregoing, subject to Section 7.2.10 of the Borrower Loan 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, request or requisition signed by an Authorized Borrower Representative and delivered to the Funding Lender, the Servicer, the Fiscal Agent, the Governmental Lender or such other Person as required under the Funding Loan Documents.

## **Section 1.2. Rules of Construction.**

(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 GAAP. All references herein to “GAAP” 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 Tax-Exempt Governmental Lender Note as “tax exempt” or to the “tax exempt status” of the Tax-Exempt Governmental Lender Note are to the exclusion of interest on the Tax-Exempt Governmental Lender Note (other than any portion of the Tax-Exempt Governmental Lender Note held 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 Article and Section headings herein and in the Table of Contents hereof 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 and for 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 NOTES

#### 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 for the account of the Governmental Lender for disbursement to the Borrower as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Disbursement Agreement. Upon each advance of principal under the Borrower Loan Agreement and the Construction Disbursement 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 the Borrower Loan Agreement, the Funding Lender agrees to advance, on behalf of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower under the Borrower Loan Agreement \$\_\_\_\_\_ on the Closing Date (the “Initial Disbursement”), and the Funding Lender agrees to correspondingly and simultaneously advance for the account of the Governmental Lender under this Funding Loan Agreement an equal amount as an advance on the Funding Loan. The Initial Disbursement shall be used by the Fiscal Agent to make a corresponding initial funding



of the Borrower Loan as described and applied as set forth in Section 7.7(a) hereof and Section 2.3(a) of the Borrower Loan Agreement. The Initial Disbursement shall be advanced by the Funding Lender in the amount of \$[55,000] on the Tax-Exempt Governmental Lender Note and \$[\_\_\_\_\_] on the Taxable Governmental Lender Note. Thereafter, all remaining disbursements of the Funding Loan shall be drawn on first on the Tax-Exempt Governmental Lender Note, until the available credit thereunder is exhausted, and then upon the Taxable Governmental Lender Note until the available credit thereunder is exhausted, but in no event shall the total of draws on the Governmental Lender Notes in aggregate exceed the Authorized Amount.

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, 2027; 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.

(c) Early Draw-Down Event. Notwithstanding any provision herein to the contrary, in the event that the Funding Lender or the Borrower (each an "Interested Party") determines in good faith that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on installments of the portion of the Funding Loan relating to the Tax-Exempt Governmental Lender Note which have not been drawn to date (the "Remaining Authorized Amount"), not being tax-exempt, or otherwise determines that it is in its best interest to convert the Funding Loan into a fully funded obligation of the Governmental Lender in order to assure that interest on the Tax-Exempt Governmental Lender Note will remain tax-exempt, and, in the case of such determination by the Borrower, such action will resolve the uncertainty with respect to the tax-exempt status of the Tax-Exempt Governmental Lender Note and will not jeopardize receipt of previously committed unfunded debt or Equity Contributions for the Project, then such Interested Party may provide a Written Direction (a "Draw-Down Notice") to the other Interested Party, the Governmental Lender and the Fiscal Agent as provided herein to cause the Remaining Authorized Amount of the Funding Loan to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date (or such greater number of Business Days to which the Borrower and the Funding Lender may agree in writing, with Written Notice to the Governmental Lender and the Fiscal Agent) on which either the Borrower or the Funding Lender sends Written Notice to the other Interested Party referencing the Draw-Down Notice and containing substantially the following words: "The [Borrower/Funding Lender] elects to [draw/fund] the Remaining Authorized Amount of the Funding Loan (\$\_\_\_\_\_) effective \_\_\_\_\_ (the "Draw-Down Date")." The Draw-Down Notice will be delivered in the manner provided for notices hereunder and the Borrower Loan Agreement.

Promptly after receipt of a Draw-Down Notice, the Funding Lender shall advance proceeds of the Funding Loan in the Remaining Authorized Amount (the "Remaining Funding Loan Proceeds") into the Note Proceeds Account of the Project Fund to be held for disbursements to the Borrower pursuant to the Funding Loan Documents. The advance of the Remaining Funding Loan Proceeds shall be treated as an advance of the full remaining principal under this Funding Loan Agreement, and a like amount of the Borrower Loan shall be deemed concurrently and simultaneously advanced under the Borrower Loan Agreement and the Governmental Lender Notes shall be deemed to have been executed and delivered in the full Authorized Amount against payment by the Funding Lender (taking into account amounts of the Funding Loan previously funded) of the purchase price equal to the Remaining Authorized Amount.

If not otherwise accounted for in the Funding Loan Documents as confirmed in writing by the Funding Lender, the Borrower agrees to pay to the Fiscal Agent on the Draw-Down Date for deposit into the Capitalized Interest Account of the Project Fund, an amount of funds to be agreed upon by the Funding Lender and the Borrower prior to the Draw-Down Date to cover the expected interest due on the Funding

Loan as a result of the Draw-Down Notice for the period between the Draw-Down Date and the date of each expected draw in accordance with the then-approved draw schedule under the Funding Loan Documents (the “Additional Interest Deposit”).

The Borrower agrees to pay to the Fiscal Agent to be held hereunder, any amounts necessary to enable the Governmental Lender to pay when due, all amounts due with respect to the Funding Loan, to the extent payments made or required to be made under the Borrower Loan Agreement and the Borrower Notes are insufficient for such purpose.

(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, 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 Notes 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 Disbursement Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Notes previously received upon payment of corresponding principal amounts under the Borrower Notes, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Notes 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 shall keep a record of the date and amount of each principal advance and any principal repayment made under the Governmental Lender Notes and shall, upon Written Request, provide the Governmental Lender and the Funding Lender with a statement of the outstanding principal balance of the Governmental Lender Notes and the Funding Loan.

(f) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Notes at the rate or rates set forth in the respective Borrower Notes and otherwise as set forth in the Borrower Loan Agreement. Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Borrower Loan Agreement shall be paid by the Borrower to the Servicer; provided, however, prior to the Conversion Date, (i) the Fiscal Agent may make the debt service and fee payments out of the Project Fund as required under Section 7.7(a)(i) hereof, and (ii) the Funding Lender may fund draws on the Funding Loan directly to the Funding Lender, at the times, in the amounts and in payment of interest due on the Borrower Notes, without requisition or approval from any other person, and such draws shall be deemed to be Funding Loan draws to fund corresponding draws on the Borrower Loan to the Borrower, and receipt by the Funding Lender thereof shall be deemed to be receipt of such payments of interest on the Borrower Loan by the Borrower to satisfy corresponding payments of interest on the Funding Loan. The Funding Lender shall promptly notify the Fiscal Agent and the Servicer in writing of the date and amount of any Funding Loan draws made directly to the Funding Lender for the payment of interest on the Borrower Notes prior to the Conversion Date as aforesaid. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Fee to the Governmental Lender and shall remit the Fiscal Agent’s Fees to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be

accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Borrower Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(g) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Notes 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 corresponding Borrower Notes. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Notes shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the corresponding Governmental Lender Notes. The Funding Lender agrees to provide copies of the final Borrower Notes and any amendments thereto, as well as of the Debt Service Schedule (as defined in Section 2.4(b) of the Borrower Loan Agreement) to the Fiscal Agent on the Closing Date, if applicable, or on the date an amendment to the Borrower Notes or Debt Service Schedule is executed or finalized, as applicable.

(h) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Notes and all agreements made in the Governmental Lender Notes, this Funding Loan Agreement and the other 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 or thereunder 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 Notes, 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 Notes, 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 the Governmental Lender Notes.** 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 Notes. The Governmental Lender Notes shall be substantially in the forms set forth in Exhibit A-1 and Exhibit A-2 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, Authentication and Delivery of the Governmental Lender Notes.** The Governmental Lender Notes shall be executed on behalf of the Governmental Lender by the manual signature of an Authorized Officer of the Governmental Lender. The signature of an individual who was the proper officer of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individual shall have ceased to hold such office prior to the delivery of the Governmental Lender Notes or shall not have held such office as of the date of the Governmental Lender Notes.

The Governmental Lender Notes shall not be entitled to any benefit under this Funding Loan Agreement, or become valid or obligatory for any purpose unless a certificate of authentication on such Governmental Lender Notes, substantially in the respective forms set forth in Exhibit A-1 and Exhibit A-2 hereto, shall have been manually executed by the Fiscal Agent. The Fiscal Agent shall authenticate the Governmental Lender Notes by execution of the certificate of authentication on the Governmental Lender Notes, and the certificate of authentication so executed on the Governmental Lender Notes shall be conclusive evidence that they have been authenticated and delivered under this Funding Loan Agreement.

The Fiscal Agent shall deliver the authenticated Governmental Lender Notes to the Funding Lender on the Closing Date concurrently with the initial funding of the Funding Loan, as contemplated by Section 2.1(b) hereof.

**Section 2.4. Required Transferee Representations; Participations; Sale and Assignment.**

(a) The Governmental Lender Notes shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Governmental Lender Notes shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Governmental Lender Notes, and any transfers of the Governmental Lender Notes, as provided herein, which books shall be maintained by the Fiscal Agent and which shall be open to inspection by the Governmental Lender. The Governmental Lender Notes shall initially be registered to the Initial Funding Lender.

(b) The Funding Lender may not sell or assign the Funding Loan and the Governmental Lender Notes, 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 Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty percent (20%) of the outstanding principal amount of the Funding Loan; provided that no participant shall hold more than fifty percent (50%) of the outstanding principal amount of the Funding Loan; and provided further that the Funding Loan may be transferred, or any participation interest therein granted, only to an Approved Transferee that delivers a letter to the Governmental Lender and the Fiscal Agent substantially in the form attached hereto as Exhibit B-1 setting forth certain representations with respect to such Approved Transferee (the "Required Transferee Representations Letter"). In any event, only the owner of the Governmental Lender Notes, as shown on the Fiscal Agent's registration books for the Governmental Lender Notes, shall have any rights of the Noteowner hereunder and under any of the other Funding Loan Documents.

Notwithstanding the preceding paragraph, no Required Transferee Representations Letter shall be required for the Funding Lender Representative to, as certified in writing by the Funding Lender to the Governmental Lender and the Fiscal Agent: (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is an Approved Transferee or (ii) sell or transfer the Funding Loan to a

special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Approved Transferees who deliver to the Funding Lender, with a copy to the Governmental Lender, a Required Transferee Representations Letter. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Governmental Lender Notes.

(c) No service charge shall be made for any sale or assignment of any portion of the Funding Loan or the Governmental Lender Notes, but the Governmental Lender and the Fiscal Agent 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 Lender shall indemnify and defend the Governmental Lender and the Fiscal Agent against any claim brought by any transferor or transferee of the Governmental Lender Notes, or any owner of participation interests therein, in respect of the Funding Loan Documents or the Borrower Loan Documents in the event that the Funding Lender permits a transfer of the Governmental Lender Notes in violation of the restrictions in Sections 2.4(b) and (c) above.

#### **Section 2.5. Assignment of Borrower Loan and Cancellation of Funding Loan.**

(a) The Funding Loan shall be subject to cancellation at the option of CCRC, in whole and not in part, by the Funding Lender on the Conversion Date upon CCRC's exercise of the Borrower Loan Purchase Option (as defined in the Loan Purchase Agreement) and delivery of notice to the Governmental Lender, Funding Lender, Fiscal Agent and Borrower as set forth in Section 1.7 of the Loan Purchase Agreement.

(b) If CCRC exercises its right of cancellation pursuant to Section 2.5(a) above, upon cancellation of the Funding Loan, the Governmental Lender Notes (but not the Borrower Notes, the Security Instrument, the Supplemental Loan Agreement or the other Borrower Loan Documents), shall be deemed paid in full and retired and shall be deemed cancelled on the books of the Fiscal Agent, whether or not the Funding Lender has delivered the Governmental Lender Notes to the Fiscal Agent. On the Conversion Date, the Funding Lender shall direct and cause the Funding Lender's representative to transfer and assign all of its right, title and interest in, to and under the Borrower Notes, the Security Instrument and the other Borrower Loan Documents to CCRC in connection with CCRC's purchase of the Borrower Loan; provided, that such instrument of assignment and assumption (which instrument may be substantially in the form of the "Assignment and Assumption" (as defined in the Loan Purchase Agreement) attached to the Loan Purchase Agreement as Exhibit B thereto), shall include the Governmental Lender as a consent party and signatory thereto and further shall include, inter alia, the following terms and conditions:

(i) the clear expression of agreement among the parties thereto, including the Governmental Lender, that: (A) the Regulatory Agreement shall continue in full force and effect, notwithstanding the consummation of the Loan Purchase Agreement and cancellation of the Funding Loan; (B) the Governmental Lender has not assigned any of its rights under the Regulatory Agreement to any party; and (C) for purposes of computing the annual administrative fee due and payable by the Borrower pursuant to Section 17 of the Regulatory Agreement, from and after the date of the consummation of the Loan Purchase Agreement and cancellation of the Funding Loan, the computation specified therein shall be based on the outstanding principal amount of the Borrower Loan rather than the outstanding principal amount of the Funding Loan;

(ii) as a condition to the execution of such Assignment and Assumption, including the consent of the Governmental Lender, that: (A) CCRC has executed and delivered a Required Transferee Representations Letter substantially in the form of Exhibit B-2 hereto; and (B) the parties to such Assignment and Assumption shall expressly agree that, effective contemporaneously with, and as a condition to consummation of the Loan Purchase Agreement: (I) all accounts held by the Fiscal Agent under the Funding Loan Agreement have been closed and any balances have been transferred pursuant to the terms of the Funding Loan Agreement and the Borrower Loan Agreement, (II) any and all fees and expenses accrued and payable under the Funding Loan Agreement as of the date of such Assignment and Assumption have been paid or provided for; (III) the Funding Loan Agreement is thereby terminated, except for such provisions, including provisions relating to indemnification and rebate (including retention of records), as expressly survive pursuant to the Funding Loan Agreement's terms; and (IV) the Unassigned Rights shall continue in full force and effect for the benefit of the Governmental Lender, notwithstanding the assignment of the Loan Documents under such Assignment and Assumption and the termination of the Funding Loan Agreement; and

(iii) the fees and expenses of the Governmental Lender and the Fiscal Agent, including fees and expenses of counsel to either of them, incurred in connection with the consummation of the Loan Purchase Agreement and the transactions contemplated by such Assignment and Assumption, have been paid in full as of the effective date thereof by the Borrower or CCRC.

(c) Upon such purchase and transfer, the Governmental Lender and, to the extent so requested hereunder by or on behalf of the Governmental Lender or the Funding Lender, the Fiscal Agent shall have no further interest in the Borrower Loan or the Borrower Loan Documents, and this Funding Loan Agreement shall be terminated in accordance with Section 12.2 (subject to any Unassigned Rights, or any indemnification or other rights expressly intended to survive termination, as set forth in this Funding Loan Agreement, the Borrower Loan Agreement or the Regulatory Agreement). The Governmental Lender and the Fiscal Agent shall execute and deliver any additional documents or take such other actions as may be reasonably required in order to effect the cancellation of the Funding Loan and transfer of the Borrower Loan to CCRC as contemplated hereunder on the Conversion Date; provided that the provisions of this Section 2.5 hereof shall also apply to any such documents and actions.

### ARTICLE III

#### PREPAYMENT

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

(a) The Governmental Lender Notes shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds of the Governmental Lender (consisting of a prepayment of the Borrower Loan) received by the Fiscal Agent, to the extent and in the manner and on any date that the corresponding Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the corresponding Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the corresponding Borrower Note; and as a condition to such prepayment there shall have been paid 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 Notes, thereby causing the Governmental Lender Notes to be prepaid, except as specifically permitted by the Borrower Notes, without the prior Written Consent of the Funding Lender, which may be withheld in the Funding Lender's sole and absolute discretion.

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

**Section 3.2. Notice of Prepayment.** Notice of prepayment of the Governmental Lender Notes shall be deemed given to the extent that notice of prepayment of the Borrower Notes is timely and properly given to the Funding Lender, the Governmental Lender and the Fiscal Agent in accordance with the terms of the Borrower Notes and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Notes is required to be given. Notice of prepayment of the Governmental Lender Notes in connection with Conversions shall be given to the California Debt Limit Allocation Committee as requested by the Borrower pursuant to Section 3.7 of the Borrower Loan Agreement.

## ARTICLE IV

### SECURITY

**Section 4.1. Security for the Funding Loan.** To secure the payment of the Funding Loan and the Governmental Lender Notes, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Notes are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does 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, the Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents, 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, the 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;

(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 by the Fiscal Agent under this Funding Loan Agreement (other than the Rebate Fund), 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 Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement.

The Fiscal Agent and the Funding Lender are hereby authorized to receive any and all such property as and for additional security for the repayment of the Funding Loan and the Governmental Lender Notes 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 Notes, 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 Notes by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or 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.

**Section 4.2. Delivery of Security.** To provide security for the payment of the Funding Loan and the Governmental Lender Notes, the Governmental Lender has pledged and assigned 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 Notes endorsed without recourse by the Governmental Lender to the Funding Lender;

(b) an executed Borrower Loan Agreement and Regulatory Agreement;

(c) the executed Security Instrument and all other Funding Loan Documents existing at the time of delivery of the Borrower Notes as each such document is identified by the Funding Lender to the Governmental Lender prior to the Closing Date, and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in a form provided by the Funding Lender;

(d) UCC 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 a form provided by the Funding Lender; and

(e) UCC financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement, in a form provided by the Funding Lender.

The Governmental Lender shall deliver and deposit with the Funding Lender 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, at the expense of the Borrower.

## ARTICLE V

### LIMITED LIABILITY

**Section 5.1. Source of Payment of Funding Loan and Other Obligations.** The Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and the Security pledged and assigned hereunder. None of 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 Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Notes or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Lender Notes, or hereunder, 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. The making of the Funding Loan and the execution and delivery of the Governmental Lender Notes shall not directly, indirectly, or contingently obligate the City, the State or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

Notwithstanding the foregoing, the Governmental Lender shall not be liable for payment of the principal of, Prepayment Premium, if any, or interest on the Governmental Lender Notes or any other costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Funding Loan Agreement, the Governmental Lender Notes or any other document, except only to the extent of the Pledged Revenues.

**Section 5.2. Exempt 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 officer, director, employee or agent of the Governmental Lender in their individual capacity, and none of the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Notes or this Funding Loan Agreement shall be liable personally on the Governmental Lender Notes or under any of the Funding Loan Documents or be subject to any personal liability or accountability by reason of the execution and delivery of the Governmental Lender Notes or the execution of any of the Funding Loan Documents.

## 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 in their respective sole discretion 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 Notes;
- (b) receipt by the Funding Lender of the original executed Borrower Notes, endorsed by the Governmental Lender without recourse to the Funding Lender;

(c) receipt by the Funding Lender and the Governmental Lender of executed counterparts of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Disbursement Agreement, the Regulatory Agreement, the Tax Certificate and 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 Required Transferee Representations from the Funding Lender;

(f) delivery into escrow or to the Fiscal Agent, as appropriate, 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) delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender and the Funding Lender to the effect that the Funding Loan Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Funding Lender, and as to such other matters and in such form as the Governmental Lender and the Funding Lender may require; and

(i) receipt by the Funding Lender of any other documents or opinions that the Funding Lender 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, the Fiscal Agent (as directed by the Funding Lender) 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, the 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.

**Section 7.2.** Reserved.

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

- (a) The Funding Loan Payment Fund;
- (b) The Project Fund, and within the Project Fund (i) the Note Proceeds Account (with a Tax-Exempt Note Proceeds Subaccount and a Taxable Note Proceeds Subaccount), (ii) the Capitalized Interest Account and (iii) the Borrower Equity Account;
- (c) The Expense Fund;
- (d) The Closing Costs Fund; and
- (e) The Rebate Fund.

All money required to be deposited with or paid to the Fiscal Agent for the account of the Funding Loan Payment Fund and the Project Fund and the accounts therein shall be held by the Fiscal Agent for the benefit of the Funding Lender, and shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

**Section 7.4. Funding Loan Payment Fund.** The Governmental Lender and the Borrower shall have no interest in the Funding Loan 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 Funding Loan Payment Fund any amounts received from the Borrower as payments of principal of, premium, if any, 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 or accounts created by this Funding Loan Agreement.

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

First, to pay or provide for the payment of the interest then due on the Funding Loan;

Second, to pay or provide for the payment or the prepayment of principal (and premium, if any) on the Funding Loan, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Funding Loan on the Maturity Date or earlier prepayment or acceleration 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, the Rebate Analyst 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 Ongoing Governmental Lender Fee, (ii) the Fiscal Agent Fee due, and (iii) the Rebate Analyst fee due.

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 two (2) Business Days to the Fiscal Agent of the amount of such deficiency.

Written Notice of any deficiency, 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 five (5) Business 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 to the party entitled thereto by the Fiscal Agent.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit an invoice to the Borrower for payment of the Ongoing Governmental Lender Fee not later than thirty (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.

No amount shall be charged against the Expense Fund except as expressly provided in this Article VII hereof.

**Section 7.6. Closing Costs Fund.** On the Closing Date, the Fiscal Agent shall deposit in the Closing Costs Fund the amount set forth in Section 7.7(a) hereof and Section 2.3(a) of the Borrower Loan Agreement, and as described on Exhibit E hereto. Upon receipt by the Fiscal Agent of a Requisition in the form of Exhibit D, amounts in the Closing Costs Fund shall be disbursed by the Fiscal Agent to pay Costs of Funding on the Closing Date or as soon as practicable thereafter, provided that no requisition shall be required for the payment of Closing Costs set forth on the Closing Flow of Funds Memorandum. Any interest earnings on amounts on deposit in the Closing Costs Fund shall remain in the Closing Costs Fund. Any moneys remaining in the Closing Costs Fund (including investment proceeds) after the earlier of (a) the payment of all costs of issuance as certified in writing to the Governmental Lender and the Fiscal Agent by the Borrower or (b) a period of six (6) months after the Closing Date, shall be transferred to the Note Proceeds Account of the Project Fund and the Closing Costs Fund shall be closed.

**Section 7.7. Project Fund.**

(a) The Initial Disbursement (as defined in Section 2.1(b), shall be deposited by the Fiscal Agent to the Note Proceeds Account of the Project Fund, and immediately transferred by the Fiscal Agent as follows: (i) \$\_\_\_\_\_ to the Closing Costs Fund, and (ii) \$[\_\_\_] to Old Republic Title Company, as provided in the Closing Flow of Funds Memorandum. Proceeds of the Funding Loan provided by the Funding Lender after the Closing Date shall be deposited to the Note Proceeds Account and the Capitalized Interest Account of the Project Fund as directed in writing by the Funding Lender. Borrower Required Equity shall be deposited to the Borrower Equity Account and the Capitalized Interest Account of the Project Fund on the Closing Date as set forth in Exhibit E and otherwise as directed in writing by the Funding Lender. The Fiscal Agent shall disburse moneys in the Note Proceeds Account, the Capitalized Interest Account and the Borrower Equity Account of the Project Fund for the acquisition, construction and equipping of the Project, to pay Qualified Project Costs and to pay other costs related to the Project as provided herein.

Except as otherwise provided in this Section, payments shall only be made from the Project Fund upon delivery to the Fiscal Agent of a Written Requisition substantially in the form attached hereto as Exhibit C and approved by the Funding Lender.

In addition to the above, in connection with any requisition or disbursement from the Project Fund:

(i) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Written Requisition signed only by the Funding Lender, 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.

(ii) Upon the occurrence of any mandatory prepayment of the Funding Loan pursuant to the terms hereof or upon the occurrence of an Event of Default, any amounts then remaining in the Project Fund may, at the Written Direction of the Funding Lender, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Funding Loan without a Written Requisition.

(iii) The Fiscal Agent shall immediately provide Written Notice to the Borrower, the Funding Lender, the Servicer and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section.

(iv) The Fiscal Agent may conclusively rely on all Written Requisitions executed by the Authorized Borrower Representative and approved by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, and shall constitute to the Fiscal Agent irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. All Written Requisitions delivered to the Fiscal Agent 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 of each thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required 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.

Upon receipt of each Written Requisition signed by the Authorized Borrower Representative and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within two (2) Business Days, make payment from the applicable account within the Project Fund in accordance with such Written Requisition. 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 as provided in the Written Requisition, (ii) to the Borrower who shall then promptly pay such person, firm or corporation to be paid, or (iii) upon receipt by the Funding Lender of evidence that the Borrower has previously paid such amount, directly to the Borrower. Upon disbursement of the full Authorized Amount, the Fiscal Agent shall close the Project Fund.

(b) Amounts set aside to pay capitalized interest on the Funding Loan, including additional capitalized interest deposited by the Borrower in connection with any deposits made pursuant to Section 2.1 hereof or extension of the Completion Deadline or the Stabilization Deadline, shall be deposited in the Capitalized Interest Account of the Project Fund. On the last Business Day immediately preceding each Interest Payment Date up to and including the Stabilization Date, the Fiscal Agent shall transfer funds from the Capitalized Interest Account of the Project Fund or to the extent that insufficient funds are on deposit in the Capitalized Interest Account, from the Borrower Equity Account of the Project Fund, to the Funding Loan Payment Fund to pay the interest due on the Funding Loan on the following Interest Payment Date

without the need for a Written Requisition. After the Stabilization Date, any amounts remaining in the Capitalized Interest Account shall be transferred to the Note Proceeds Account of the Project Fund to the extent such amounts were funded with proceeds of the Funding Loan and to the Borrower Equity Account of the Project Fund to the extent such amounts were funded with Borrower Required Equity.

**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 or the Rebate Analyst to be transferred thereto pursuant to Section 5.35 of the Borrower Loan Agreement.

**Section 7.9. Investments.** Amounts on deposit in all funds and accounts established hereunder shall be invested in Permitted Investments as directed in writing by the Borrower. Investment income earned on amounts on deposit in each fund and account shall be retained in and credited to and become a part of the amounts on deposit in such fund or account. In giving such direction, the Borrower shall take into account that amounts held in any funds or accounts created under this Funding Loan Agreement shall be subject in all cases to any applicable restrictions in Section 8.7 hereof and in the Tax Certificate.

The Fiscal Agent may make any and all investments permitted under this Funding Loan Agreement through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Fiscal Agent and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Permitted Investments under this Funding Loan Agreement. The Fiscal Agent shall not be liable for any losses from investments made by the Fiscal Agent in accordance with this Funding Loan Agreement. The Fiscal Agent may rely conclusively on the investment direction of the Borrower as to the suitability and legality of the directed investments.

The Governmental Lender, the Funding Lender and the Borrower (by its execution of the Borrower Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Governmental Lender or the Funding Lender the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the Governmental Lender and the Funding Lender will not receive such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

The amounts received upon the sale of the Tax-Exempt Governmental Lender Note and interest and other investment earnings on those amounts shall be allocated and used by the Borrower for financing Qualified Project Costs of each building and related land in the Project so that the aggregate basis of each such building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed by fifty percent (50%) or more from those amounts.

## 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, 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 Notes and the Funding Loan and apply the proceeds

thereof to finance costs of the Project, and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Notes, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, the Funding Loan Documents to which it is a party.

(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 this Funding Loan Agreement, executing and delivering the Governmental Lender Notes, financing costs of 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 without investigation, 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 Notes 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 with respect to which the Governmental Lender has been served with process or, to the knowledge of the Governmental Lender without investigation, is 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 to which it is a party on behalf of the Governmental Lender.

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

(e) The California Debt Limit Allocation Committee has provided an allocation of the State's 2023 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Tax-Exempt Governmental Lender Note, and the Governmental Lender has timely made any required carry forward elections with respect to such allocations. 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 Tax-Exempt Governmental Lender Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Tax-Exempt Governmental Lender Note that is required by Section 3.03 of IRS Notice 2011-63.

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 II 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 Notes, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Notes and this Funding Loan Agreement.

**Section 8.4. The Servicer.** The Funding Lender may appoint the 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 the Governmental Lender to the Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement. The Funding Lender shall advise the Governmental Lender and the Fiscal Agent in writing of its appointment of any Servicer, indicating the identity of the Servicer and generally the responsibilities of the Servicer thereunder.

**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 to nor obligated to) perform and observe any agreement or covenant of the Governmental Lender under the Borrower Loan Agreement.

(b) The Governmental Lender will promptly notify or cause to be notified the Borrower, the Fiscal Agent, the Servicer, if any, and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received Written Notice of such event.

**Section 8.6. Maintenance of Records; Inspection of Records.**

(a) The Fiscal Agent 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 Governmental Lender Notes and interests therein. The Fiscal Agent 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 Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender and the Funding Lender will at any and all times, upon the reasonable request of the Servicer, if any, the Borrower, the Fiscal Agent, the Governmental Lender 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 or the Funding Lender, as appropriate, 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) Not take any action within its control to cause the Tax-Exempt Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

(b) Require the Borrower to agree, solely by causing the Borrower to execute the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Tax-Exempt Governmental Lender Note, or any other moneys which may be deemed to be proceeds of the Tax-Exempt Governmental Lender Note pursuant to the Code, which would cause the Tax-Exempt Governmental Lender Note 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.

(c) Require the Borrower solely by causing the Borrower to execute 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 is by this reference incorporated into 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: (a) the Governmental Lender is assuming, with the consent of the parties hereto, the truth of the covenants and representations of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement and the Tax Certificate, and the Borrower’s compliance therewith; (b) the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control; (c) no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender; and (d) in complying with the foregoing covenants, the Governmental Lender may rely on an 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 Potential Default under the Borrower Loan Agreement exists.

## 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 on the Governmental Lender Notes when such interest becomes due and payable; or

(b) A default in the payment of principal of, or Prepayment Premium on, the Governmental Lender Notes when such principal or Prepayment Premium becomes due and payable, whether at its stated maturity, by declaration of acceleration, 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 thirty (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 consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed thirty (30) days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) 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.**

(a) Subject to the provisions of Article V and 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 Notes and the interest accrued to be immediately due and payable, by notice to the Governmental Lender, the Fiscal Agent 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 Notes shall 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 (A) all overdue installments of interest on the Funding Loan and the Governmental Lender Notes, (B) the principal of and Prepayment Premium, on the Funding Loan and the Governmental Lender Notes 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 and the Governmental Lender Notes, (C) 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 the Governmental Lender Notes, and (D) 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 (A) and (C) above); and

(ii) all Events of Default, other than the nonpayment of the principal of the Funding Loan and the Governmental Lender Notes 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) 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; the Funding Lender Enforcement.**

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Article V, this Section 9.3 and Section 9.9 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, subject to the provisions of Article V hereof, 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. The 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 UCC 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 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 Notes, this Funding Loan Agreement or the other Funding 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 Notes or any other 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 Tax-Exempt Governmental Lender Note, and provided that no such waiver or forbearance shall apply to the Unassigned Rights and the Governmental Lender may enforce the Unassigned Rights by means of an action for specific performance; 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 or any of the Unassigned Rights.

(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 sixty (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 by the Borrower of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement or any of the other Funding Loan Documents to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed thereunder, the Funding Lender shall have the right to exercise all its rights and remedies thereunder.

**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 the whole amount of the Funding Loan, as evidenced by the Governmental Lender Notes, 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;

(b) Second: 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 Fiscal Agent, the Governmental Lender, the Funding Lender, the Servicer and the Rebate Analyst; 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.

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

**Section 9.6. Restoration of Positions.** If the 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 the 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 any default in obligations due to 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 the Borrower Loan Agreement or the Borrower Notes.** 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 Notes, whether or not the Governmental Lender Notes have 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) above, 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 Notes, 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.

## ARTICLE X

### AMENDMENT; AMENDMENT OF THE 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 Notes may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent (at the Funding Lender's direction) and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests 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. The Fiscal Agent may, but shall not be required to, enter into any amendment or waiver affecting its rights or duties hereunder.

**Section 10.2. Amendments Require the Funding Lender Consent.** The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Funding Loan Document without the prior Written Consent of the Funding Lender, which consent shall not be unreasonably delayed or withheld if it relates to the Unassigned Rights.

**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 (in its reasonable discretion if such amendment, change or modification relates to the Unassigned Rights), and (ii) the Funding Lender and the Governmental Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and

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 the Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints U.S. Bank Trust Company, National Association as the 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 the Fiscal Agent.**

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.

(a) If an event of default exists hereunder or under any Funding Loan Document, the Fiscal Agent shall exercise such rights and powers vested in it by this Funding Loan Agreement, solely at the written direction and at the expense of the Funding Lender.

(b) 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:

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

(ii) 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;

(iii) 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 exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(iv) 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 indemnity satisfactory to it 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 Funding Loan Documents to which it is a party and other related documents, solely in its capacity as the Fiscal Agent.

(c) Whether or not herein and 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.

(d) 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 on their face.

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

(f) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 hereof shall extend to actions taken or omitted in its role as a party to 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 other Funding Loan Document and provided that a Responsible Officer of the Fiscal Agent has actual knowledge of or has received Written Notice of the existence of such default, promptly, and in any event within fifteen (15) days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, 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 actually 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 the 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 Representative of the Governmental Lender.

(c) Whenever in the administration of this Funding Loan Agreement or any of the other Funding Loan Documents, 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 other Funding 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.



(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 its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto. 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.

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any other Funding Loan Document except for failure by the Borrower to make payments of principal, interest, Prepayment Premium, if any, or the Ongoing Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Notice 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 other Funding 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.

(h) The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Funding Loan Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder.); provided, however, that the Funding Lender, the Governmental Lender, the Servicer, if any, and/or the Borrower, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Funding Lender, the Governmental Lender, the Servicer and/or the Borrower, as applicable, whenever a person is to be added or deleted from the listing. If the Funding Lender, the Governmental Lender, the Servicer and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Funding Lender, the Governmental Lender, the Servicer and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Funding Lender, the Governmental Lender, the Servicer and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Funding Lender, the Governmental Lender, the Servicer, the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes,

passwords and/or authentication keys upon receipt by the Funding Lender, the Governmental Lender, the Servicer and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Funding Lender, the Governmental Lender, the Servicer and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Funding Lender, the Governmental Lender, the Servicer and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

(i) In no event shall the Fiscal Agent be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Fiscal Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) All notices, approvals, consents, requests and any communications to the Fiscal Agent hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Fiscal Agent). Electronic signatures believed by the Fiscal Agent to comply with the E-SIGN ACT of 2000 or other applicable law shall be deemed original signatures for all purposes. If the parties chooses to use electronic signatures to sign documents delivered to the Fiscal Agent, such parties agree to assume all risks arising out of its use of electronic signatures, including without limitation the risk of the Fiscal Agent acting on an unauthorized document and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Fiscal Agent may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Fiscal Agent in lieu of, or in addition to, any document signed via electronic signature.

**Section 11.5. Not Responsible for Recitals.** The recitals contained herein and in the Governmental Lender Notes 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. 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.

**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 the 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 hereunder directed or as 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, pay the Fiscal Agent its fees and 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. The 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 sixty (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 forty-five (45) 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 thirty (30) days' notice by (i) the Governmental Lender, with Written Notice delivered to the Funding Lender and the Borrower or (ii) the Funding Lender, with Written Notice delivered to the Governmental Lender 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 the Security shall be in the possession of a receiver or Fiscal Agent lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within sixty (60) days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to appoint a successor Fiscal Agent, then either (i) the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent; or (ii) 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 the 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 (unless the Funding Lender removes the Fiscal Agent). 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 the 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, the retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to the 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 the successor Fiscal Agent all property and money held by the retiring Fiscal Agent hereunder. Upon request of any successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to the 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 the 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 successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Governmental Lender and the Funding Lender within thirty (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 Funding Loan Document, 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 Written 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 or any Funding Loan Document 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 him or 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 the 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 the Servicer or for any acts or omissions of the 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.

**Section 11.16. City Contracting Provisions.** The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit F to this Funding Loan Agreement, to the extent applicable to the Funding Lender as maker of the Funding Loan or the Fiscal Agent as fiscal agent for the Funding Loan (each, a “Trustee” for purposes of Exhibit F), which is incorporated in and made a part of this Funding Loan Agreement by this reference.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1. Notices.** All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Governmental Lender:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, CA 94102  
Attention: City Controller  
Telecopier: (415) 554-7466

with copies to (none of which copies shall constitute notice to the Governmental Lender):

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 140  
San Francisco, CA 94102  
Attention: City Treasurer  
Telecopier: (415) 554-4672

City and County of San Francisco  
Mayor’s Office of Housing and Community  
Development  
One South Van Ness, 5th Floor  
San Francisco, CA 94103  
Attention: Director  
Telecopier: (415) 701-5501

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 234  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: (415) 554-4755

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 338  
San Francisco, CA 94102  
Attention: Finance Team  
Telecopier: (415) 554-4864

City and County of San Francisco  
Office of Community Investment and Infrastructure  
One South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attention: Executive Director  
Telecopier: (415) 749-2400

If to the Fiscal Agent:

U.S. Bank Trust Company, National Association  
1 California Street, Suite 1000  
San Francisco, CA 94111  
Attention: Global Corporate Trust  
Telephone: (415) 677-3593

If to the Borrower:

Transbay 2 Family, L.P.  
c/o Transbay 2 Family LLC  
c/o Mercy Housing Calwest  
1256 Market Street  
San Francisco, CA 94102

with a copy to:

Gubb & Barshay  
235 Montgomery Street, Suite 1110  
San Francisco, CA 94104  
Attention: Erica Williams Orcharton  
Telephone: (415) 781-6600  
Facsimile: (415) 781-6967

and a copy to:

Bank of America, N.A.  
100 Federal Street  
MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management  
Facsimile: (617) 346-2257

and a copy to:

Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attention: Mercedes Martin, Esq.  
Email: mmartin@buchalter.com  
Facsimile: (213) 630-5799  
Matter No.: B0965-0782

If to the Funding Lender: Bank of America, N.A.  
Dallas Infomart  
1950 N. Stemmons Fwy, Suite 5049  
Dallas, TX 75207  
TX2-160-05-33  
Attention: Construction Servicing (Real Estate) Loan  
Administration Manager

and a copy to: California Community Reinvestment Corporation  
100 West Broadway, Suite 1000  
Glendale, CA 91210  
Attention: President

and a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attention: Mercedes Martin, Esq.  
Email: mmartin@buchalter.com  
Facsimile: (213) 630-5799  
Matter No.: B0965-0782

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (a) three (3) Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (b) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (c) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (d) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

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 (a) on and after payment in full of the Governmental Lender Notes, or (b) on and after the cancellation of the Funding Loan pursuant to Section 2.5 hereof, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

**Section 12.3. Recycling Transactions.** Notwithstanding any provision of this Funding Loan Agreement or the Tax-Exempt Governmental Lender Note to the contrary, the Governmental Lender shall be permitted to direct any Tax-Exempt Borrower Note prepayments to be transferred to a custodian or



trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of the Tax-Exempt Governmental Lender Note, so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of the Tax-Exempt Governmental Lender Note. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

**Section 12.4. 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 12.5. 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 after such date and prior to the date of payment.

**Section 12.6. Governing Law.** This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State applicable to contracts made and performed in the State.

**Section 12.7. 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 Notes 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 12.8. 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 12.9. Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement are without recourse to the Borrower or to the Borrower’s partners.

**Section 12.10. Electronic Transactions.** The transactions described in this Funding Loan Agreement may be conducted, and related documents 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. Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of the first (1st) day of May, 2024.

[Signature page follows]

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

BANK OF AMERICA, N.A., as Funding Lender

By: \_\_\_\_\_  
[NAME],  
[TITLE]

CITY AND COUNTY OF SAN FRANCISCO

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

Daniel Adams, Director,  
Mayor's Office of Housing and  
Community Development

Approved as to form:

DAVID CHIU  
City Attorney

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

Kenneth D. Roux  
Deputy City Attorney

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A-1**

**FORM OF THE TAX-EXEMPT GOVERNMENTAL LENDER NOTE**

**THIS GOVERNMENTAL LENDER NOTE MAY BE OWNED ONLY BY AN APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT REFERENCED HEREIN, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS GOVERNMENTAL LENDER NOTE (A) REPRESENTS THAT IT IS AN APPROVED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(TRANSBAY BLOCK 2 EAST),  
SERIES 2024B-1**

Dated May \_\_\_\_, 2024

\$95,866,019

FOR VALUE RECEIVED, the undersigned CITY AND COUNTY OF SAN FRANCISCO (“Obligor”) promises to pay to the order of BANK OF AMERICA, N.A. (“Holder”) the maximum principal sum of NINETY-FIVE MILLION EIGHT HUNDRED SIXTY-SIX THOUSAND NINETEEN DOLLARS (\$95,866,019), on \_\_\_\_\_ 1, 20\_\_\_\_, 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 May 1, 2024 (the “Funding Loan Agreement”), among Obligor, U.S. Bank Trust Company, National Association, as Fiscal Agent (the “Fiscal Agent”), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note 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 this Governmental Lender Note 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. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

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 this Governmental Lender Note 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 and permanent loan (the “Borrower Loan”) made by Obligor from proceeds of the Funding Loan to Transbay 2 Family, L.P., a California limited partnership, as borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of May 1, 2024 (as the same may be modified, amended or

supplemented from time to time, the “Borrower Loan Agreement”), among the Obligor, the Fiscal Agent and the Borrower, evidenced by the Borrower Notes (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Tax-Exempt Borrower Note for complete payment and prepayment terms of the Tax-Exempt Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is one of two Governmental Lender Notes evidencing the obligation of the Obligor to repay the Funding Loan to the Funding Lender. The other Governmental Lender Note is designated the “City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East) Series 2024B-2 (Taxable),” and is dated and delivered concurrently herewith in the aggregate principal amount of \$19,979,199. Such other Governmental Lender Note corresponds to and evidences the obligation of the Governmental Lender to repay the remaining balance of the Funding Loan with interest thereon and any premium with respect thereto and corresponds to the Taxable Borrower Note in the same principal amount and bearing the same series designation as such other Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and the Security pledged and assigned under the Funding Loan Agreement. None of the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth in the Funding Loan Agreement) nor any public agency shall in any event be liable for the payment of the principal of, Prepayment Premium (if any) or interest on this Governmental Lender Note or the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein and in the Funding Loan Agreement. None of the Funding Loan or this Governmental Lender Note or any of the Governmental Lender’s agreements or obligations with respect to the Funding Loan or this Governmental Lender Note 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. The execution and delivery of this Governmental Lender Note shall not directly or indirectly or contingently obligate the Obligor or the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan 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 the limited liability of the Governmental Lender, and prepayment and the acceleration of maturity of this Governmental Lender Note.

If there is an Event of Default under the Funding Loan Documents, 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.

Subject to Article V of the Funding Loan Agreement and as otherwise set forth in the Funding Loan 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.

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.

This Governmental Lender Note shall not be entitled to any benefit under the Funding Loan Agreement, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Fiscal Agent.

Notwithstanding any provision of this Governmental Lender Note or the Funding Loan Agreement to the contrary, the Governmental Lender shall be permitted to direct Tax-Exempt Borrower Note prepayments to be transferred to a custodian or trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of this Governmental Lender Note, so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of this Governmental Lender Note. The preceding provisions shall apply only for purposes of preserving or "recycling" private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

In the event of any conflict between the terms of this Governmental Lender Note and the terms of the Funding Loan Agreement, the terms of the Funding Loan Agreement shall control.

The Governmental Lender hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Governmental Lender Note do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California (including the Act).

[Signature Page Follows]

IN WITNESS WHEREOF, the Obligor has caused this City and County of San Francisco Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-1 to be duly executed by the manual or facsimile signature of its Mayor as of the date first set forth above.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
London N. Breed,  
Mayor



**CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A-2**

**FORM OF THE TAXABLE GOVERNMENTAL LENDER NOTE**

**THIS GOVERNMENTAL LENDER NOTE MAY BE OWNED ONLY BY AN APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT REFERENCED HEREIN, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS GOVERNMENTAL LENDER NOTE (A) REPRESENTS THAT IT IS AN APPROVED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(TRANSBAY BLOCK 2 EAST),  
SERIES 2024B-2 (TAXABLE)**

Dated May \_\_\_\_, 2024

\$19,979,199

FOR VALUE RECEIVED, the undersigned CITY AND COUNTY OF SAN FRANCISCO (“Obligor”) promises to pay to the order of BANK OF AMERICA, N.A. (“Holder”) the maximum principal sum of NINETEEN MILLION NINE HUNDRED SEVENTY-NINE THOUSAND ONE HUNDRED NINETY-NINE DOLLARS (\$19,979,199), on \_\_\_\_\_ 1, 20\_\_\_\_, 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 May 1, 2024 (the “Funding Loan Agreement”), among Obligor, U.S. Bank Trust Company, National Association, as Fiscal Agent (the “Fiscal Agent”), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note 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 this Governmental Lender Note 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. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

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 this Governmental Lender Note 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 and permanent loan (the “Borrower Loan”) made by Obligor from proceeds of the Funding Loan to Transbay 2 Family, L.P., a California limited partnership, as borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of May 1, 2024 (as the same may be modified, amended or

supplemented from time to time, the “Borrower Loan Agreement”), among the Obligor, the Fiscal Agent and the Borrower, evidenced by the Borrower Notes (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Taxable Borrower Note for complete payment and prepayment terms of the Taxable Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is one of two Governmental Lender Notes evidencing the obligation of the Obligor to repay the Funding Loan to the Funding Lender. The other Governmental Lender Note is designated the “City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East) Series 2024B-1,” and is dated and delivered concurrently herewith in the aggregate principal amount of \$95,866,019. Such other Governmental Lender Note corresponds to and evidences the obligation of the Governmental Lender to repay the remaining balance of the Funding Loan with interest thereon and any premium with respect thereto and corresponds to the Tax-Exempt Borrower Note in the same principal amount and bearing the same series designation as such other Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and the Security pledged and assigned under the Funding Loan Agreement. None of the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth in the Funding Loan Agreement) nor any public agency shall in any event be liable for the payment of the principal of, Prepayment Premium (if any) or interest on this Governmental Lender Note or the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein and in the Funding Loan Agreement. None of the Funding Loan or this Governmental Lender Note or any of the Governmental Lender’s agreements or obligations with respect to the Funding Loan or this Governmental Lender Note 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. The execution and delivery of this Governmental Lender Note shall not directly or indirectly or contingently obligate the Obligor or the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan 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 the limited liability of the Governmental Lender, and prepayment and the acceleration of maturity of this Governmental Lender Note.

If there is an Event of Default under the Funding Loan Documents, 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.

Subject to Article V of the Funding Loan Agreement and as otherwise set forth in the Funding Loan 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.

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.

This Governmental Lender Note shall not be entitled to any benefit under the Funding Loan Agreement, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Fiscal Agent.

In the event of any conflict between the terms of this Governmental Lender Note and the terms of the Funding Loan Agreement, the terms of the Funding Loan Agreement shall control.

The Governmental Lender hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Governmental Lender Note do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California (including the Act).

[Signature Page Follows]

IN WITNESS WHEREOF, the Obligor has caused this City and County of San Francisco Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-2 to be duly executed by the manual or facsimile signature of its Mayor as of the date first set forth above.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
London N. Breed,  
Mayor

**CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent

Authorized Officer

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

## EXHIBIT B-1

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS LETTER (FUNDING LOAN)

City and County of San Francisco, California  
San Francisco, California

The undersigned, as holder (the “Holder”) of a loan (the “Funding Loan”) in the maximum amount of \$ \_\_\_\_\_ from BANK OF AMERICA, N.A. (the “Funding Lender”) to CITY AND COUNTY OF SAN FRANCISCO (the “Governmental Lender”) pursuant to a Funding Loan Agreement dated as of May 1, 2024 (the “Funding Loan Agreement”) among the Funding Lender, U.S. Bank Trust Company, National Association, as Fiscal Agent and the Governmental Lender (the “Funding Loan”) evidenced by the City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-1 and the City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-2 (Taxable) (collectively, the “Governmental Lender Notes”), or an interest therein, 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. The Holder is 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 [or an interest therein]. The Holder acknowledges that it has not relied upon the Governmental Lender for any information in connection with the Holder’s purchase of the Funding Loan [or an interest therein].
3. The Holder is an Approved Transferee.
4. The Holder acknowledges that it is purchasing [an interest in] the Funding Loan 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, except as contemplated by the Loan Purchase Agreement; provided, however, that the Holder may sell or transfer the Governmental Lender Notes and the Funding Loan as provided in Section 2.4 of the Funding Loan Agreement.
5. In the event any placement memorandum that is prepared and provided to any subsequent buyer or beneficial owner of such portion of the Funding Loan will disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and the Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement

memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Governmental Lender Notes are not registered under the Securities Act of 1933, as amended, and that such registration is not legally required as of the date hereof; and further understands that the Governmental Lender Notes (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

7. The Holder understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, the State of California or any political subdivision thereof, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Revenues and Security as set forth in the Funding Loan Agreement.

8. [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.

[Remainder of page intentionally left blank.]



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

[ \_\_\_\_\_ ], as Holder

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

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

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

[Signature Page to Required Transferee Representations Letter]

**EXHIBIT B-2**

**FORM OF REQUIRED TRANSFEREE  
REPRESENTATIONS LETTER (BORROWER LOAN)**

City and County of San Francisco, California  
San Francisco, California

Pursuant to that certain Funding Loan Agreement dated as of May 1, 2024 (the “Funding Loan Agreement”) among Bank of America, N.A., as Funding Lender (the “Funding Lender”), U.S. Bank Trust Company, National Association, as Fiscal Agent (the “Fiscal Agent”), and the City and County of San Francisco, California, as Governmental Lender (the “Governmental Lender”), evidenced by the City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-1 (the “Tax-Exempt Governmental Lender Note”) and the City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-2 (Taxable) (the “Taxable Governmental Lender Note” and, together with the Tax-Exempt Governmental Lender Note, the “Governmental Lender Notes”), the Initial Funding Lender has made a loan in the principal amount of \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED \_\_\_\_\_ THOUSAND DOLLARS (\$ \_\_\_\_\_) (the “Funding Loan”) to the Governmental Lender. Pursuant to that certain Borrower Loan Agreement (the “Borrower Loan Agreement”) dated as of May 1, 2024, and executed by and among Transbay 2 Family, L.P., a California limited partnership (the “Borrower”), the Governmental Lender, and the Fiscal Agent, the Governmental Lender has made a loan in the principal amount of \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED \_\_\_\_\_ THOUSAND and No/100 Dollars (\$ \_\_\_\_\_) (the “Borrower Loan”) to the Borrower of the proceeds of the Funding Loan. The Borrower Loan is evidenced by the Borrower Notes executed by Borrower in favor of the Governmental Lender in the aggregate principal amount of the Borrower Loan, and is further evidenced by the documents described in the Borrower Loan Agreement as the “Borrower Loan Documents.” The Borrower Notes are secured by, among other things, the Security Instrument, encumbering the Borrower’s interest in the Property. Pursuant to the Assignment of Deed of Trust (as defined below), the rights of the Governmental Lender in and to the Borrower Loan Agreement, the Borrower Notes and the Security Instrument (except for the Unassigned Rights) have been assigned by the Governmental Lender to the Fiscal Agent. Capitalized terms used but not defined in this Required Transferee Representations Letter shall have the meanings given in the Funding Loan Agreement.

Pursuant to Section 1.7 of that certain Loan Purchase Agreement dated as of May 1, 2024 by and among the Initial Funding Lender, California Community Reinvestment Corporation, a California nonprofit public benefit corporation (“CCRC”) and the Borrower (the “Loan Purchase Agreement”) and subject to the terms and conditions set forth therein and in the Funding Loan Agreement, CCRC has elected to purchase the Borrower Loan in lieu of the Funding Loan. As a condition to the execution of an Assignment and Assumption of Deed of Trust and Loan Documents, of even date herewith (the “Loan Assignment”), by the Fiscal Agent, in favor of CCRC, as assignee thereunder (for purposes of this letter, the “Transferee”), with the consent of the Governmental Lender, the Borrower, and the Funding Lender, the undersigned is delivering this Required Transferee Representations Letter and hereby acknowledges receipt of the Purchased Documents (as defined in the Loan Assignment).

In connection with the purchase of the Borrower Loan by the Transferee, the Transferee makes the following representations upon which you may rely:

1. The Transferee has all requisite authority to purchase the Borrower Loan and to execute this letter and any other instruments and documents required to be executed by the Transferee in connection with the purchase of the Borrower Loan.

2. The Transferee is an Approved Transferee.

3. The Borrower Loan is being acquired by the Transferee for investment and not with a view to, or for resale in connection with, any distribution of the Borrower Loan, and the Transferee intends to hold the Borrower Loan for its own account and for an indefinite period of time. The Transferee understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Transferee understands that the Borrower Loan (a) is not registered under the Securities Act of 1933 nor is it being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state and that any exemption from federal or state securities registration requirements for which the Funding Loan was eligible may not extend to the Borrower Loan or the Borrower Notes; (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which is not readily marketable. The Transferee acknowledges and agrees that the Governmental Lender is not the issuer of the Borrower Loan, and that the Transferee is solely responsible for compliance with applicable securities laws relative to its purchase of the Borrower Loan and any subsequent transfer of the Borrower Loan pursuant to the terms of the Borrower Loan Agreement and the Borrower Notes.

5. The Transferee understands that (a) the Borrower Loan is not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, the State of California or any political subdivision thereof, (b) the Borrower Loan does not and will not represent or constitute any debt, obligation or pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; and (c) the Governmental Lender has no liability with respect to the Borrower Loan, which is solely an obligation and liability of the Borrower. The Transferee acknowledges and agrees that interest on the Borrower Loan or the Borrower Notes is not exempt from federal or state income taxes and that any opinions issued with respect to the Funding Loan relative to the status of interest on the Funding Loan do not extend to the status of interest on the Borrower Loan or the Borrower Notes, about which Tax Counsel has expressed no opinion.

6. The Transferee 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 Transferee has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Borrower Loan. The Transferee has not relied upon the Governmental Lender for any information in connection with its purchase of the Borrower Loan.

7. The Transferee acknowledges that neither the Governmental Lender nor the Borrower has prepared an offering document with respect to the Borrower Loan.

8. The Transferee has made its own inquiry and analysis with respect to the Borrower Loan and the security therefor, and other material factors affecting the security and payment of the Borrower Loan. The Transferee is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Borrower Loan.

9. The Transferee acknowledges and agrees that, as provided in the Borrower Loan Agreement, it may sell, assign or transfer the Borrower Loan only to a single investor that, the Borrower Loan may only be transferred in its entirety, and that none of the Funding Loan Documents may be transferred independently of any other Funding Loan Document.

10. The Transferee agrees to indemnify and hold harmless the Governmental Lender with respect to any claim asserted against the Governmental Lender that is based upon the sale, transfer or disposition of the Borrower Loan by the Transferee other than as permitted herein pursuant to the Borrower Loan Agreement.

Very truly yours,

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

[California Community Reinvestment Corporation]

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

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

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

**EXHIBIT C**  
**FORM OF WRITTEN REQUISITION**  
**(Project Fund)**

Draw # \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

Attention:

Re: City and County of San Francisco, California Multifamily Housing Revenue Note (Transbay Block 2 East), Series 2024B-1 and Series 2024B-2 (Taxable)

This requisition (“Requisition”) is being delivered to you in accordance with the Funding Loan Agreement dated as of May 1, 2024 (the “Funding Loan Agreement”) among Bank of America, N.A. (the “Funding Lender”), the City and County of San Francisco, California (the “Governmental Lender”) and U.S. Bank Trust Company, National Association, as Fiscal Agent (the “Fiscal Agent”) pursuant to which the above-referenced Series 2024B-1 note (the “Tax-Exempt Governmental Lender Note”) and Series 2024B-2 (Taxable) note (the “Taxable Governmental Lender Note”) were executed and delivered. Capitalized terms not defined herein shall have the meanings assigned to them in the Funding Loan Agreement.

1. You are requested to disburse funds in the amount of [ \$ \_\_\_\_\_ ] from the Note Proceeds Account and [ \$ \_\_\_\_\_ ] from the Borrower Equity Account of the Project Fund as Draw [ # \_\_\_\_\_ ] 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.

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 this Requisition to any of the persons, firms or corporations named therein, and (b) that any materials, supplies or equipment covered by this 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 this Requisition;

(ii) this 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 this Requisition has been incurred in or about the acquisition, construction, rehabilitation, development 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) the amounts included in this Requisition to be funded from the Note Proceeds Account of the Project Fund contains no items representing any Costs of Funding or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) payment of the costs included in this Requisition will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement or the Tax Certificate;

(vi) not less than ninety five percent (95%) of the sum of: (a) the amounts included in this Requisition to be funded from the Note Proceeds Account of the Project Fund and related to the Tax-Exempt Governmental Lender Note plus (b) all amounts previously disbursed from the Note Proceeds Account of the Project Fund and related to the Tax-Exempt Governmental Lender Note have been or will be applied by the Borrower to pay Qualified Project Costs;

(vii) the Borrower acknowledges that fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not deemed to be Qualified Project Costs; and

(viii) 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 or under the Borrower Loan Agreement.

Dated: [Date]

Approved by the Funding Lender:

BANK OF AMERICA, N.A.

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

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

Date: \_\_\_\_\_

Transbay 2 Family, L.P.,  
a California limited partnership

By: Transbay 2 Family LLC  
a California limited liability company,  
its managing general partner

By: Mercy Housing Calwest,  
a California nonprofit public benefit  
corporation,  
its sole member/manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**  
**CLOSING COSTS REQUISITION**

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

Attention:

Re: City and County of San Francisco, California Multifamily Housing Revenue Note  
(Transbay Block 2 East), Series 2024B-1

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The undersigned, an authorized representative of Transbay 2 Family, L.P., a California limited partnership (the “Borrower”), hereby certifies to you that he/she is authorized and empowered to submit this requisition to you and that attached hereto as Schedule “A” is a schedule of issuance costs incurred in connection with the closing of the funding loan evidenced by the above described Multifamily Housing Revenue Note (the “Governmental Lender Note”), including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned’s information and belief, such amounts are true and correct.

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of May 1, 2024 (the “Funding Loan Agreement”) among Bank of America, N.A. (the “Funding Lender”), the City and County of San Francisco, California (the “Governmental Lender”) and U.S. Bank Trust Company, National Association, as Fiscal Agent (the “Fiscal Agent”) pursuant to which the Governmental Lender Note was issued and delivered. You are hereby instructed to withdraw from the Closing Costs Fund created under the Funding Loan Agreement the amounts shown across from each payee listed on Schedule “A” hereto and pay such amounts to each such payee by wire transfer or by such other means as is acceptable to you and any such payee.

Dated: [Date]

Very truly yours,

Transbay 2 Family, L.P.,  
a California limited partnership

By: Transbay 2 Family LLC  
a California limited liability company,  
its managing general partner

By: Mercy Housing Calwest,  
a California nonprofit public benefit  
corporation,  
its sole member/manager

By: \_\_\_\_\_  
Ramie Dare,  
Vice President

*[Signatures continue in the following page]*

Approved by the Funding Lender:

BANK OF AMERICA, N.A.

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

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

Date: \_\_\_\_\_



SCHEDULE A

**EXHIBIT E**

**INITIAL DEPOSITS AT CLOSING**

Sources	Note Proceeds Account	Capitalized Interest Account	Borrower Equity Account	Closing Costs Fund	Expense Account	Total
Note	\$_____*					\$_____*
Equity						
Total	\$_____*					\$_____*

\* To be immediately transferred, as provided in Section 7.7(a), \$0 to the Closing Costs Fund and \$\_\_\_\_\_ to Old Republic Title Company to pay Project costs.

## EXHIBIT F

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

The following provisions shall apply to this Agreement as if set forth in the text thereof. Capitalized terms used but not defined in this Appendix shall have the meanings given in this Agreement.

1. Nondiscrimination; Penalties.

(a) *Nondiscrimination in Contracts.* The Trustee shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Trustee shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Trustee is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Trustee does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By entering into this Agreement, the Trustee confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Trustee to remove from, City facilities personnel of the Trustee who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Trustee shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Trustee acknowledges that this Agreement and all records related to its formation, the Trustee's performance under this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Agreement, the Trustee acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Trustee's board of directors; the Trustee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Trustee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Trustee. The Trustee certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Agreement, the Trustee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Trustee is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Trustee is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, the Trustee certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Trustee shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Trustee is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Trustee shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. Prohibition on Political Activity with City Funds. In performing under this Agreement, the Trustee shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Trustee is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Agreement requires the City to disclose "Private Information" to the Trustee within the meaning of San Francisco Administrative Code Chapter 12M, the Trustee shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Trustee is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Agreement, the Trustee may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Trustee, such information must be held by the Trustee in confidence and used only in performing this Agreement. The Trustee shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Trustee agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Trustee's obligations under Chapter 12T is set forth in this Section. The Trustee is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the Trustee's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved

14. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City 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 City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

15. Conflict of Interest. By entering into this Agreement, the Trustee certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

16. Food Service Waste Reduction Requirements. The Trustee shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Distribution of Beverages and Water. The Trustee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. The Trustee agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

18. Consideration of Salary History. The Trustee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Trustee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Trustee is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Trustee is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Appendix A, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

20. First Source Hiring Program. The Trustee must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and the Trustee is subject to the enforcement and penalty provisions in Chapter 83.

21. Prevailing Wages. Services to be performed by the Trustee under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) or Section 21C of the Administrative Code (collectively, “Covered Services”). The provisions of Section 6.22(e) and Section 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by the Trustee.

22. Contractor Vaccination Policy.

(a) Trustee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Trustee agrees that:

(i) Where applicable, Trustee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Trustee an exemption based on medical or religious grounds; and

(ii) If Trustee grants Covered Employees an exemption based on medical or religious grounds, Trustee will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at

<https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).