

File No. 250462

Committee Item No. 12

Board Item No. 12

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date May 14, 2025

Board of Supervisors Meeting Date May 20, 2025

#### Cmte Board

- |  |                                     |  |
|--|-------------------------------------|--|
| <input type="checkbox"/>   | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>   | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>   | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>   | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>   | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>   | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <ul style="list-style-type: none"><li>• Draft Funding Loan Agreement</li><li>• Draft Borrower Loan Agreement</li><li>• Draft Amended and Restated Funding Loan Agreement</li><li>• Draft Amended and Restated Borrower Loan Agreement</li><li>• Draft Regulatory Agreement and Declaration of Restrictions</li><li>• Draft Assignment of Deed of Trust</li></ul> |                                     |  |
| <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Publication Certification 12/20/2025</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Hearing Minutes 1/6/2025</u>             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CDLAC Resolution No. 24-284 12/11/2024</u>     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Public Disclosures</u>                         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MOHCD Presentation 5/14/2025</u>               |
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Completed by: Brent Jalipa Date May 8, 2025

Completed by: Brent Jalipa Date May 15, 2025

1 [Multifamily Housing Revenue Notes - 160 Freelon Housing Partners, L.P. - 160 Freelon  
2 Street - Not to Exceed \$76,000,000]

3 **Resolution authorizing the execution and delivery of multifamily housing revenue**  
4 **notes in one or more series in an aggregate principal amount not to exceed \$76,000,000**  
5 **for the purpose of providing financing for the construction of an 85-unit multifamily**  
6 **rental housing project located at 160 Freelon Street, known as “160 Freelon”;**  
7 **approving the form of and authorizing the execution of a funding loan agreement**  
8 **providing the terms and conditions of the construction loan from the construction**  
9 **funding lender identified therein to the City and for the execution and delivery of the**  
10 **construction note; approving the form of and authorizing the execution of a borrower**  
11 **loan agreement providing the terms and conditions of the construction loan from the**  
12 **City to 160 Freelon Housing Partners, L.P. (the borrower); approving the form of and**  
13 **authorizing the execution of an amended and restated funding loan agreement**  
14 **providing the terms and conditions of the permanent loan from the permanent funding**  
15 **lender to the City and for the execution and delivery of the permanent note; approving**  
16 **the form of and authorizing the execution of an amended and restated borrower loan**  
17 **agreement providing the terms and conditions of the permanent loan from the City to**  
18 **the borrower; approving the form of and authorizing the execution of a regulatory**  
19 **agreement and declaration of restrictive covenants; authorizing the execution of an**  
20 **assignment of deed of trust and related documents; authorizing the collection of**  
21 **certain fees; approving, for purposes of the Internal Revenue Code of 1986, as**  
22 **amended, the execution and delivery of federally tax-exempt residential mortgage**  
23 **revenue notes by the City in an aggregate principal amount not to exceed \$48,900,000;**  
24 **approving modifications, changes and additions to the documents; ratifying and**  
25

1     **approving any action heretofore taken in connection with the back-to-back loans, the**  
2     **notes and the project; granting general authority to City officials to take actions**  
3     **necessary to implement this Resolution, as defined herein; and related matters, as**  
4     **defined herein.**

5  
6           WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
7     “Board”) desires to provide for the financing of a portion of the costs of the acquisition and  
8     new construction by 160 Freelon Housing Partners, L.P., a California limited partnership (the  
9     “Borrower”), of an 85-unit residential rental housing development located at 160 Freelon  
10    Street, known as “160 Freelon” (the “Project”), to provide housing for persons and families of  
11    low income and very low income through the issuance of a multifamily housing revenue  
12    Construction Note (hereinafter defined) and a multifamily housing revenue Permanent Note  
13    (hereinafter defined), each in one or more series which may be taxable or tax-exempt  
14    (collectively, the “Notes”); and

15          WHEREAS, The City and County of San Francisco (the “City”) is authorized to issue  
16    revenue notes for such purpose pursuant to the Charter of the City, Article I of Chapter 43 of  
17    the Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of  
18    Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of  
19    California (the “Health and Safety Code”), as now in effect and as each may from time to time  
20    hereafter be amended or supplemented (collectively, the “Act”); and

21          WHEREAS, On January 24, 2023, the Board adopted its Resolution No. 009-23,  
22    authorizing the Mayor of the City (the “Mayor”) to execute and deliver a certificate or other  
23    written instrument in the name of and on behalf of the City (an “Inducement Certificate”),  
24    without further action of the Board, for the purposes of (i) declaring the intent of the City to  
25    reimburse certain expenditures of a multifamily rental housing project from proceeds of future

1 bonded indebtedness, and (ii) authorizing the Director (the “Director”) of the Mayor’s Office of  
2 Housing and Community Development (“MOHCD”) to submit an application to the California  
3 Debt Limit Allocation Committee (“CDLAC”) to permit the issuance of bonded indebtedness  
4 for the Project, and the Mayor approved such Resolution on February 3, 2023; and

5 WHEREAS, The Mayor on August 21, 2023, executed an Inducement Certificate  
6 declaring the intent of the City to reimburse certain Project expenditures from proceeds of  
7 future tax-exempt multifamily housing revenue bonds, for purposes of Section 1.150-2 of the  
8 U.S. Treasury Regulations and authorizing the Director to submit an application to CDLAC to  
9 permit the issuance of tax-exempt bonded indebtedness in an amount not to exceed  
10 \$80,000,000; and

11 WHEREAS, On December 11, 2024, CDLAC in its Resolution Number 24-284  
12 allocated an amount not to exceed \$48,900,000 (the “Allocation Amount”) in qualified private  
13 activity tax-exempt bond allocation cap to the Project; and

14 WHEREAS, On January 3, 2025, the City caused a notice to be published in the  
15 Notices section of the Mayor’s Office of Housing and Community Development website (at  
16 <https://sfmohcd.org/notices-0>) stating that a public hearing with respect to the issuance of the  
17 tax-exempt multifamily housing revenue bonds for the Project, pursuant to Section 147(f) of  
18 the Code, would be held by MOHCD on January 15, 2025; and

19 WHEREAS, MOHCD held the duly noticed public hearing described above on  
20 January 15, 2025, at which hearing an opportunity was provided for persons to comment on  
21 the execution and delivery of the Notes and the Project; and

22 WHEREAS, The minutes of such public hearing were provided to this Board prior to  
23 this meeting; and  
24  
25

1           WHEREAS, There has been prepared and presented to this Board for consideration at  
2 this meeting the documentation required for the execution and delivery of the Notes, and such  
3 documentation is on file with the Clerk of the Board of Supervisors (the "Clerk of the Board");  
4 and

5           WHEREAS, It appears that each of the documents which is now before this Board is  
6 substantially in final form and is an appropriate instrument to be executed and delivered for  
7 the purposes intended; and

8           WHEREAS, This Board finds that public interest and necessity require that the City at  
9 this time make arrangements for the funding loan, the borrower loan, and the execution and  
10 delivery of the Notes and related documents; and

11           WHEREAS, The Notes will be limited obligations of the City, the sole source of  
12 repayment of which shall be payments made by the Borrower under the Borrower Loan  
13 Agreement and the Amended and Restated Borrower Loan Agreement (each as hereinafter  
14 defined) together with investment income on monies in certain funds and accounts held under  
15 the Funding Loan Agreement and the Amended and Restated Funding Loan Agreement  
16 (each as hereinafter defined); and

17           WHEREAS, The City has engaged Stradling Yocca Carlson & Rauth LLP and the Law  
18 Offices of Alexis S. M. Chiu, as co-special counsel with respect to the Notes ("Co-Special  
19 Counsel"); and

20           WHEREAS, Bank of America, N.A. (or an affiliate thereof) (the "Construction Funding  
21 Lender") has expressed its intention to make the construction funding loan, to be evidenced  
22 by a multifamily housing revenue construction note (the "Construction Note"), and in  
23 connection therewith, the City, the Construction Funding Lender and the Borrower are to enter  
24 into certain documents for the construction funding loan, including without limitation the  
25

1 Funding Loan Agreement, the Borrower Loan Agreement, and certain assignments, allonges  
2 and other ancillary documents; and

3 WHEREAS, Citibank, N.A. (or an affiliate thereof) (the "Permanent Funding Lender")  
4 has expressed its intention to make the permanent funding loan, to be evidenced by a  
5 multifamily housing revenue permanent note (the "Permanent Note"), and, in connection  
6 therewith, the City, the Permanent Funding Lender and the Borrower are to enter into certain  
7 documents for the permanent funding loan, including without limitation amended and restated  
8 versions of the Funding Loan Agreement (the "Amended and Restated Funding Loan  
9 Agreement"), the Borrower Loan Agreement (the "Amended and Restated Borrower Loan  
10 Agreement") and certain assignments, allonges and other ancillary documents; and

11 WHEREAS, The aforesaid permanent funding loan and related Permanent Note are  
12 intended to replace a like amount of the aforesaid construction funding loan and the related  
13 Construction Note; as such, the permanent funding loan and Permanent Note will not  
14 represent new or additional indebtedness of the Project and will not require separate  
15 authorization by this Board; and

16 WHEREAS, The interest on the Notes may qualify for tax exemption under Section 103  
17 of the Internal Revenue Code of 1986, as amended ("Code"), only if the Notes are approved  
18 by an applicable elected representative of a governmental unit having jurisdiction over the  
19 area in which the Project is located in accordance with Section 147(f) of the Code; and

20 WHEREAS, The Project is located wholly within the City; and

21 WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
22 the applicable elected representative authorized to approve the issuance of the Notes within  
23 the meaning of Section 147(f) of the Code, and this approval is also intended to constitute the  
24 approval of the applicable elected representative of the governmental unit having jurisdiction  
25 over the area in which the Project is located; now, therefore, be it

1           RESOLVED, By this Board of Supervisors of the City and County of San Francisco as  
2 follows:

3           Section 1. Approval of Recitals. The Board hereby finds and declares that the above  
4 recitals are true and correct.

5           Section 2. Approval of Execution and Delivery of Note. In accordance with the Act, the  
6 Funding Loan Agreement and the Amended and Restated Funding Loan Agreement, the City  
7 is hereby authorized to execute and deliver the Notes in one or more series designated as  
8 “City and County of San Francisco Multifamily Housing Revenue Note (160 Freelon) Series  
9 2025D” and such other or additional designations as may be necessary or appropriate to  
10 distinguish such series from every other series of bonds or notes, in an aggregate principal  
11 amount not to exceed \$76,000,000 provided that any tax-exempt portion of the Notes shall not  
12 exceed the Allocation Amount, with an interest rate not to exceed twelve percent (12%) per  
13 annum for the Notes, and which shall have final maturity dates not later than forty (40) years  
14 from the date of execution and delivery of the Notes. The Note(s) shall be in the form(s) set  
15 forth in and otherwise in accordance with the Funding Loan Agreement and the Amended and  
16 Restated Funding Loan Agreement, and shall be executed by the manual or facsimile  
17 signature of the Mayor.

18           Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement (the  
19 “Funding Loan Agreement”) in the form presented to the Board, a copy of which is on file with  
20 the Clerk of the Board, is hereby approved. The Funding Loan Agreement shall be entered  
21 into by and among the City, the Construction Funding Lender and U.S. Bank Trust Company,  
22 National Association, as Fiscal Agent (the “Fiscal Agent”). Each of the Mayor, the Director,  
23 the Housing Development Director of MOHCD or any other Authorized Governmental Lender  
24 Representative (as such term is defined in the Funding Loan Agreement) of the City, or a  
25 designee thereof (each, an “Authorized Representative”), is hereby authorized to execute the

1 Funding Loan Agreement, approved as to form by the City Attorney of the City (the "City  
2 Attorney"), in substantially said form, together with such additions thereto and changes therein  
3 as the City Attorney and Co-Special Counsel may approve or recommend in accordance with  
4 Section 9 hereof.

5 Section 4. Approval of Borrower Loan Agreement. The Borrower Loan Agreement (the  
6 "Borrower Loan Agreement") by and among the City, the Fiscal Agent and the Borrower, in  
7 the form presented to the Board, a copy of which is on file with the Clerk of the Board, is  
8 hereby approved. Each Authorized Representative of the City is hereby authorized to execute  
9 the Borrower Loan Agreement, approved as to form by the City Attorney, in substantially said  
10 form, together with such additions thereto and changes therein as the City Attorney and Co-  
11 Special Counsel may approve or recommend in accordance with Section 9 hereof.

12 Section 5. Approval of Regulatory Agreement and Declaration of Restrictive  
13 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants (the  
14 "Regulatory Agreement" and together with the Funding Loan Agreement, the Borrower Loan  
15 Agreement, the Amended and Restated Funding Loan Agreement, and the Amended and  
16 Restated Borrower Loan Agreement, the "City Documents"), between the City and the  
17 Borrower, in the form presented to the Board, a copy of which is on file with the Clerk of the  
18 Board, is hereby approved. Each Authorized Representative of the City is hereby authorized  
19 to execute the Regulatory Agreement, approved as to form by the City Attorney, in  
20 substantially said form, together with such additions thereto and changes therein as the City  
21 Attorney and Co-Special Counsel may approve or recommend in accordance with Section 9  
22 hereof.

23 Section 6. Approval of Amended and Restated Funding Loan Agreement. The  
24 Amended and Restated Funding Loan Agreement, in the form presented to the Board, a copy  
25 of which is on file with the Clerk of the Board, is hereby approved. The Amended and



1 Restated Funding Loan Agreement shall be entered into by and among the City, the  
2 Permanent Funding Lender and the Fiscal Agent. Each Authorized Representative of the City  
3 is hereby authorized to execute the Amended and Restated Funding Loan Agreement,  
4 approved as to form by the City Attorney, in substantially said form, together with such  
5 additions thereto and changes therein as the City Attorney and Co-Special Counsel may  
6 approve or recommend in accordance with Section 9 hereof.

7 Section 7. Approval of Amended and Restated Borrower Loan Agreement. The  
8 Amended and Restated Borrower Loan Agreement by and among the City, the Fiscal Agent  
9 and the Borrower, in the form presented to the Board, a copy of which is on file with the Clerk  
10 of the Board, is hereby approved. Each Authorized Representative of the City is hereby  
11 authorized to execute the Amended and Restated Borrower Loan Agreement, approved as to  
12 form by the City Attorney, in substantially said form, together with such additions thereto and  
13 changes therein as the City Attorney and Co-Special Counsel may approve or recommend in  
14 accordance with Section 9 hereof.

15 Section 8. Issuer Fees. The City, acting through MOHCD, shall charge an annual  
16 fee for monitoring the compliance by the Borrower with certain provisions of the Regulatory  
17 Agreement in an amount not to exceed 0.125% of the average outstanding aggregate  
18 principal amount of the Notes (which after repayment of the Notes shall be no less than  
19 \$2,500 annually) for the term of the Regulatory Agreement, or at some lesser amount if  
20 required by federal tax law applicable to the Notes. The initial monitoring fee shall be payable  
21 at the time of, and contingent upon, the closing for the Notes. The Board hereby authorizes  
22 MOHCD to charge and collect the fees described in this section.

23 Section 9. Modifications, Changes, Additions. Any Authorized Representative of the  
24 City executing the City Documents, in consultation with the City Attorney and Co-Special  
25 Counsel, is hereby authorized to approve and make such modifications, changes or additions

1 to the City Documents as may be necessary or advisable, including, without implied limitation,  
2 changes to the titles of any City Documents, provided that such modification does not  
3 authorize an aggregate principal amount of the Notes in excess of \$76,000,000 or an  
4 aggregate principal amount of the tax-exempt portion of the Notes in excess of the Allocation  
5 Amount, provide for a final maturity of the Notes more than forty (40) years from the date of  
6 execution and delivery thereof, or provide for the Notes to bear interest at a rate in excess of  
7 twelve percent (12%) per annum. The approval of any modification, addition or change to any  
8 of the aforementioned documents shall be evidenced conclusively by the execution and  
9 delivery of the document in question by an Authorized Representative of the City.

10 Section 10. Public Approval. The Board, as the applicable elected representative of  
11 the governmental unit having jurisdiction over the area in which the Project is located, hereby  
12 approves the issuance of one or more federally tax-exempt series of the Notes in the  
13 aggregate principal amount not to exceed the Allocation Amount for purposes of Section  
14 147(f) of the Code.

15 Section 11. Ratification. All actions heretofore taken by the officers and agents of the  
16 City with respect to the funding loan and the execution and delivery of the Notes consistent  
17 with the City Documents and this Resolution, are hereby approved, confirmed and ratified.

18 Section 12. General Authority. The proper officers of the City (including the Authorized  
19 Representatives of the City) are hereby authorized and directed, for and in the name and on  
20 behalf of the City, to do any and all things and take any and all actions and execute and  
21 deliver any and all certificates, assignments, agreements (including, without implied limitation,  
22 any tax-exemption documents, assignments including an assignment of the deed of trust  
23 executed by the Borrower in favor of the City, allonges, endorsements, subordinations, and  
24 such other agreements to provide adequate or additional security or indemnities as required  
25 by lenders to consummate the financing) and other documents and amendments, including

1 but not limited to those documents described in the City Documents, which they, or any of  
2 them, in consultation with the City Attorney, may deem necessary or advisable in order to  
3 consummate the lawful execution and delivery of the Notes and to effectuate the purposes  
4 thereof and of the City Documents. Any such actions are solely intended to further the  
5 purposes of this Resolution, and are subject in all respects to the terms of this Resolution. No  
6 such actions shall increase the risk to the City or require the City to spend any resources not  
7 otherwise granted herein. Final versions of any such documents shall be provided to the  
8 Clerk of the Board for inclusion in the official file within thirty (30) days of execution by all  
9 parties.

10 Section 13. File. All documents referenced herein as being on file with the Clerk of the  
11 Board are located in File No. 250462, which is hereby declared to be a part of this Resolution  
12 as if set forth fully herein.

13 Section 14. Effective Date. This Resolution shall take effect from and after its adoption  
14 by the Board and approval by the Mayor.

15  
16 APPROVED AS TO FORM:  
17 DAVID CHIU  
18 City Attorney

19 By: /s/ KENNETH DAVID ROUX  
20 KENNETH DAVID ROUX  
21 Deputy City Attorney

22 n:\financ\as2025\2400040\01837089.docx  
23  
24  
25

**FUNDING LOAN AGREEMENT**

**among**

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

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

**and**

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

**Evidenced by**

**\$ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1**

**and**

**\$ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-2 (Taxable)**

**Dated as of June 1, 2025**

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EXHIBIT G	CITY CONTRACTING PROVISIONS



## FUNDING LOAN AGREEMENT

**THIS FUNDING LOAN AGREEMENT** (this “**Funding Loan Agreement**”), is made and entered into as of June 1, 2025, by and among **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the **CITY AND COUNTY OF SAN FRANCISCO** (the “**Governmental Lender**”), a municipal corporation organized and existing under the laws of the State of California (the “**State**”), and **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 (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

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

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

**C.** Pursuant to the Act and the Borrower Loan Agreement dated as of June 1, 2025 (the “**Borrower Loan Agreement**”) by and among the Governmental Lender, the Fiscal Agent and 160 Freelon Housing Partners, L.P., a California limited partnership duly organized and existing under the laws of the State (the “**Borrower**”), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Borrower Loan**”) to provide for the financing of a multifamily rental housing development located at 160 Freelon Street in San Francisco, California, known as 160 Freelon (the “**Project**”).

**D.** The Governmental Lender is making the Borrower Loan to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_ (the “**Funding Loan**” and together with the Borrower Loan, the “**Loans**”). The Funding Loan is evidenced by the two Governmental Notes dated the Delivery Date in the forms attached hereto as Exhibit A-1 (the “**Tax-Exempt Governmental Note**”) and Exhibit A-2 (the “**Taxable Governmental Note**” and,

together with the Tax-Exempt Governmental Note and all riders and addenda thereto, the “**Governmental Notes**”) delivered by the Governmental Lender to the Initial Funding Lender.

**E.** The Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement and the Construction Continuing Covenant Agreement (hereinafter defined) has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Borrower Loan to the Borrower in corresponding installments pursuant to the Borrower Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Construction Continuing Covenant Agreement and the other Financing Documents.

**F.** The Borrower has agreed to use the proceeds of the Borrower Loan to finance the construction of the Project and to pay certain closing costs with respect to the Loans.

**G.** The Borrower’s repayment obligations in respect of the Borrower Loan will be evidenced by two Promissory Notes dated the Delivery Date (together with all riders and modifications thereto, the “**Borrower Notes**”) delivered to the Governmental Lender, which Borrower Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**H.** To secure the Borrower’s obligations under the Borrower Notes, the Borrower will execute and deliver to the Governmental Lender a Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof (the “**Security Instrument**”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**I.** Citibank, N.A. (the “**Permanent Funding Lender**”), the Initial Funding Lender, and the Borrower have entered into a Forward Purchase Agreement of even date herewith (the “**Permanent Commitment**”) whereby the Permanent Funding Lender has agreed, subject to the satisfaction of the Conditions to Conversion set forth in the Permanent Commitment on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Tax-Exempt Funding Loan from the Initial Funding Lender following the Conversion Date subject to the terms and conditions of the Permanent Commitment.

**J.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Permanent Commitment, the portion of the Borrower Loan relating to the Tax-Exempt Governmental Note (the “**Tax-Exempt Borrower Loan**”) will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Permanent Funding Lender shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Tax-Exempt Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Borrower Loan will not convert from the Construction Phase to the Permanent Phase, and the Permanent Funding Lender will have no obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan as the holder of the Tax-Exempt Governmental Note.

**K.** As a condition to Conversion, certain Financing Documents are required to be amended and restated and the Borrower is required to enter into a Loan Covenant Agreement with the Permanent Funding Lender (the “**Permanent Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Permanent Commitment.

**L.** If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Permanent Funding Lender on the Conversion Date as set forth above, the Initial Funding Lender shall deliver the Tax-Exempt Funding Loan to the Permanent Funding Lender for purchase pursuant to the terms of the Permanent Commitment (such date of purchase being referred to as the “**Permanent Purchase Date**”).

**M.** Upon the occurrence of the Permanent Purchase Date, the Initial Funding Lender will assign to the Permanent Funding Lender all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Note, this Funding Loan Agreement, the Borrower Loan, the Tax-Exempt Borrower Note, the Borrower Loan Agreement, the Permanent Continuing Covenant Agreement and the other Financing Documents, and the portion of the Funding Loan represented by the Taxable Governmental Note (the “**Taxable Funding Loan**”) will be paid in full.

**N.** The Governmental Lender has determined that all things necessary to incur the Funding Loan and to execute and deliver the Governmental Notes have occurred; the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Notes, subject to the terms of this Funding Loan Agreement, have in all respects been duly authorized; the Governmental Notes, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, will be the valid, binding and legal limited obligations of the Governmental Lender; and this Funding Loan Agreement will constitute a valid lien on the properties, interests, revenues and payments that are pledged herein to the payment of the principal of, premium, if any, and interest on, the Governmental Notes.

**O.** The Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a “conduit issuer” and the Funding Loan and the Governmental Notes will be limited obligations of the Governmental Lender as described in Section 2.03 hereof.

**P.** The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including trust powers to accept the duties of the Fiscal Agent hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Borrower Loan Agreement.

“*Act*” means the Charter of the City and County of San Francisco, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

*“Actual Borrower Loan Amount”* has the meaning given to the term “Permanent Period Amount” in the Permanent Commitment.

*“Administration Fund”* means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Advance Request”* shall mean a request by the Borrower to the Initial Funding Lender that the Initial Funding Lender disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

*“Advance Termination Date”* means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Initial Funding Lender equals the Authorized Amount, (ii) \_\_\_\_\_, 20\_\_\_\_, (iii) the Conversion Date, (iii) the date of a Determination of Taxability or (iv) the occurrence of an Event of Default hereunder.

*“Assignment”* means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

*“Authorized Amount”* shall mean \$\_\_\_\_\_, that being the sum of the maximum principal amount of the Tax-Exempt Funding Loan (\$\_\_\_\_\_) and the maximum principal amount of the Taxable Funding Loan (\$\_\_\_\_\_) authorized under this Funding Loan Agreement.

*“Authorized Officer”* means (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 the Governmental Lender in writing to act on its behalf, 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 by an Authorized Officer, which certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Officer; (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (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 Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

*“Bankruptcy Code”* means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

*“Bond Counsel”* means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Notes, or (b) 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 municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

*“Borrower”* means 160 Freelon Housing Partners, L.P., a California limited partnership duly organized and existing under the laws of the State, or any of its permitted successors or assigns, as owner of the Project.

*“Borrower Equity Account”* means the Borrower Equity Account of the Borrower Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*“Borrower Equity Deposit”* means [\$0.00], which shall be comprised of sources other than the proceeds of the Tax-Exempt Borrower Loan.

*“Borrower Loan”* means the loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the maximum aggregate principal amount of \$\_\_\_\_\_, as evidenced by the Borrower Notes.

*“Borrower Loan Agreement”* means the Borrower Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

*“Borrower Loan Documents”* means the Security Instrument, the Borrower Notes, the Borrower Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Borrower Loan or any portion thereof.

*“Borrower Loan Fund”* means the Borrower Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*“Borrower Notes”* means, prior to the Conversion Date, collectively, the Series D-1 Borrower Note and the Series D-2 Borrower Note. From and after the Conversion Date, all references to the Borrower Notes shall mean only the Tax-Exempt Borrower Note represented by the Series D-1 Borrower Note.

*“Business Day”* means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

*“Certificate of the Governmental Lender”* and *“Request of the Governmental Lender”* mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

*“Code”* means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

*“Conditions to Conversion”* has the meaning given to that term in the Permanent Commitment.

*“Construction Continuing Covenant Agreement”* means the Construction Disbursement Agreement, dated as of the date hereof, by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

*“Construction Loan Documents”* means the Construction Disbursement Agreement and all other documents to be executed and delivered by Borrower to the Initial Funding Lender in connection with the Project.

*“Construction Phase”* means the construction phase of the Tax-Exempt Borrower Loan, which time period shall commence on the Delivery Date and remain in effect to, but not including, the time of Conversion on the Conversion Date.

*“Construction Phase Interest Rate”* has the meaning set forth on Exhibit F.

*“Continuing Covenant Agreement”* means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) from and after the Conversion Date, the Permanent Continuing Covenant Agreement.

*“Conversion”* means conversion of the Tax-Exempt Borrower Loan from the Construction Phase to the Permanent Phase on the Conversion Date. The Taxable Borrower Loan will be paid in full as a Condition to Conversion.

*“Conversion Date”* means the date the Permanent Funding Lender purchases the Tax-Exempt Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Permanent Funding Lender in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

*“Cost,” “Costs” or “Costs of the Project”* means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Tax-Exempt Funding Loan or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) costs of issuance of the Tax-Exempt Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition, construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Notes (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), *“Cost,” “Costs” or “Costs of the Project”* shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services

actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction, rehabilitation or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof). Costs of the Project shall not include Costs of Issuance.

*“Cost of Issuance Fund”* means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Costs of Issuance”* means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Initial Funding Lender and the Initial Funding Lender’s counsel, (e) the Permanent Funding Lender and the Permanent Funding Lender’s counsel, (f) [Reserved], and (g) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Borrower Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

*“Costs of Issuance Deposit”* means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal [\$5,000] and shall be comprised of sources other than the proceeds of the Borrower Loan.

*“Default Rate”* means the lower of (i) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus [four percent (4%)] per annum or (ii) the Maximum Interest Rate.

*“Delivery Date”* means June \_\_, 2025, the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Notes by the Governmental Lender to the Initial Funding Lender.

*“Determination of Taxability”* shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation, (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Series D-1 Governmental Note may no longer be excludable from gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

*“Electronic Notice”* means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

*“Event of Default”* or *“event of default”* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

*“Extraordinary Services”* means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Borrower Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Borrower Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Borrower Loan Documents.

*“Extraordinary Fiscal Agent’s Fees and Expenses”* means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during any Rebate Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

*“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 Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment. To the extent required by the Regulations, the term “investment” will include a hedge.

*“Fannie Mae”* means the Federal National Mortgage Association, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

*“Fee Component”* has the meaning set forth in the Borrower Loan Agreement.

*“Financing Documents”* means, collectively, this Funding Loan Agreement, the Governmental Notes, the Tax Certificate, the Borrower Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans, and any amendments, modifications, renewals or substitutions of any of the foregoing pursuant to their respective terms.



*“Fiscal Agent”* means U.S. Bank Trust Company, National Association, and its successors hereunder.

*“Forward Commitment Maturity Date”* has the meaning given to the term “Termination Date” in the Permanent Commitment.

*“Funding Lender”* means any Person who is the holder of the Governmental Notes.

*“Funding Lender Representative”* means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Permanent Funding Lender shall become the Funding Lender Representative upon the occurrence of the Conversion Date.

*“Funding Loan”* means the loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

*“Funding Loan Agreement”* means this Funding Loan Agreement, dated as of June 1, 2025, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent as it may from time to time be supplemented, modified or amended pursuant to the applicable provisions hereof.

*“Funding Loan Amortization Schedule”* means the amortization schedule for the Governmental Notes that is part of the Permanent Loan Documents after Conversion.

*“Government Obligations”* means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

*“Governmental Lender”* means City and County of San Francisco, a municipal corporation organized and existing under the laws of the State.

*“Governmental Lender Fee”* has the meaning given to the term “Annual Fee” in Section 17 of the Tax Regulatory Agreement.

*“Governmental Notes”* means, until the Conversion Date, collectively, the Series D-1 Governmental Note and the Series D-2 Governmental Note. From and after the Conversion Date, all references to the Governmental Notes shall mean only the Series D-1 Governmental Note, also referred to herein as Tax-Exempt Governmental Note.

*“Initial Debt Service Deposit”* means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Borrower Loan (as provided in Section 4.02 of the Borrower Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

*“Initial Installment”* means \$ \_\_\_\_\_, being the initial advance of the Funding Loan by the Initial Funding Lender pursuant to Section 2.01 hereof.

*“Initial Funding Lender”* means Bank of America, N.A., a national banking association, as initial holder of the Governmental Notes.

*“Interest Payment Date”* means (i) the first day of each calendar month, commencing [July 1, 2025], (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

*“Investment Income”* means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

*“Loans”* means, together, the Borrower Loan and the Funding Loan.

*“Loan Payment Fund”* means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Loan Prepayment Fund”* means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Maturity Date”* means, (i) with respect to the Tax-Exempt Funding Loan, [July 1, 2059], and (ii) with respect to the Taxable Funding Loan, \_\_\_\_\_, 20\_\_\_\_.

*“Maximum Interest Rate”* means the lesser of twelve percent (12%) per annum or the maximum interest rate allowed by law.

*“Moody’s”* means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

*“Net Proceeds”* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

*“No Adverse Effect Opinion”* means an opinion of Bond Counsel to the effect that the taking of the action specified therein will not, in and of itself, impair the exclusion of interest on the portion of the Funding Loan represented by the Series D-1 Governmental Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

*“Notes”* means, together, the Borrower Notes and the Governmental Notes.

*“Notice of Conversion”* means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Permanent Funding Lender to the Governmental Lender, the Fiscal Agent, the Borrower, and the Initial Funding Lender (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by the Permanent Funding Lender (if a waiver is permitted and is granted by the Permanent Funding Lender, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Tax-Exempt Borrower Note and the Tax-Exempt Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

*“Ordinary Fiscal Agent’s Fees and Expenses”* means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement

during each twelve-month period, which fee is equal to (and shall not exceed) [\$3,000] and shall be payable annually in arrears on each June 1 commencing June 1, 2026.

*“Permanent Commitment”* means the Forward Purchase Agreement, of even date herewith, among the Permanent Funding Lender, the Initial Funding Lender, and the Borrower pursuant to which the Permanent Funding Lender has agreed to purchase the Tax-Exempt Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such Forward Purchase Agreement may be amended, modified or supplemented from time to time.

*“Permanent Continuing Covenant Agreement”* means the Loan Covenant Agreement to be delivered on the Conversion Date in the form attached to the Permanent Commitment by and between the Borrower and the Permanent Funding Lender, as the same may be amended, modified or supplemented from time to time.

*“Permanent Funding Lender”* means Citibank, N.A., a national banking association, organized and existing under the laws of the United States of America, and its successors and assigns.

*“Permanent Loan Documents”* means, collectively, the amended and restated versions of the Funding Loan Agreement, Tax-Exempt Governmental Lender Note, Borrower Loan Agreement, Tax-Exempt Borrower Note, Security Instrument and other Financing Documents, as the same may be executed and delivered on the Conversion Date pursuant to the Permanent Commitment.

*“Permanent Phase”* means the permanent phase of the Tax-Exempt Borrower Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Tax-Exempt Borrower Loan.

*“Permanent Phase Interest Rate”* means, during the Permanent Phase, the fixed interest rate of \_\_\_\_% per annum; provided during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a 360-day year and the actual number of days elapsed.

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

*“Person”* means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

*“Pledged Security”* shall have the meaning given to that term in Section 2.02 hereof.

*“Pre-Conversion Loan Equalization Payment”* means a prepayment of the Tax-Exempt Borrower Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Tax-Exempt Borrower Loan and the Tax-Exempt Funding Loan to the Actual Borrower Loan Amount.

*“Prepayment Premium”* shall mean any premium payable hereunder in connection with a prepayment of the Tax-Exempt Funding Loan, which premium shall be an amount equal to the amount

of premium, if any, payable by the Borrower under the Tax-Exempt Borrower Note, in each case in connection with a prepayment of the Tax-Exempt Borrower Loan.

*“Principal Office of the Fiscal Agent”* means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures or loan agreements pursuant to which municipal or governmental obligations are issued.

*“Project”* means the residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as 160 Freelon, located at 160 Freelon Street in San Francisco, California, and the leasehold interest in the land described in the Security Instrument.

*“Project Site”* means the site on which the Project is situated, as described in the definition of “Project.”

*“Project Account”* means the Project Account of the Borrower Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*“Qualified Investments”* means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit 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; (f) 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 or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations; (g)(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 or other services to the fund; (h) the Pooled Investment Fund of the City and County of San Francisco; or (i) any other investments approved in writing by the Funding Lender Representative 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.

“*Qualified Project Costs*” means costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general Federal income tax principles and in accordance with United States Treasury Regulations §1.103-8(a)(1), provided, however, that only such portion of interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate or persons or entities treated as related to the Borrower within the meaning of Sections 1504, 267 and 707 of the Code (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Affiliate, and (C) any overhead expenses incurred by the Affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such Affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to the date of a declaration of “official intent” to reimburse costs paid with respect to the Project (within the meaning of §1.150-2 of the United States Treasury Regulations) or the date of issue of the Series D-1 Governmental Note, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Series D-1 Governmental Note such costs were (A) costs of issuance of the Series D-1 Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations §1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition, construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Series D-1 Governmental Note (as defined in United States Treasury Regulations §1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid).

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“*Rebate Analyst*” means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) 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”* means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Rebate Year”* means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Series D-1 Governmental Note.

*“Requisition”* means, with respect to the Borrower Loan Fund, the requisition in the form of Exhibit E to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account (subject to Section 2.01(b) hereof) and/or the Borrower Equity Account of the Borrower Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of Exhibit D to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

*“Resolution”* means the resolution adopted by the Governmental Lender authorizing the Funding Loan, the Borrower Loan and the execution and delivery of the Financing Documents to which it is a party.

*“Responsible Officer”* means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

*“Revenue Fund”* means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Revenues”* means (a) all payments made with respect to the Borrower Loan pursuant to the Borrower Loan Agreement, the Borrower Notes or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

*“S&P”* means S&P Global Ratings, a Standard & Poor’s Financial Services LLC business division, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

*“Security Instrument”* means the Leasehold Construction Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing (Affordable Housing - California), dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Borrower Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the

Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Permanent Commitment upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

“*Series D-1 Governmental Note*” means the Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, dated the Delivery Date, in the principal amount of \$\_\_\_\_\_, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A-1, evidencing the portion of the Funding Loan corresponding to the Series D-1 Borrower Note, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Series D-2 Governmental Note*” means the Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable), dated the Delivery Date, in the principal amount of \$\_\_\_\_\_, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A-2, evidencing the portion of the Funding Loan corresponding to the Series D-2 Borrower Note, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Series D-1 Borrower Note*” means the Promissory Note dated the Delivery Date, in the principal amount of \$\_\_\_\_\_, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the portion of the Borrower Loan corresponding to the Series D-1 Governmental Note, which Series D-1 Borrower Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Permanent Commitment upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Series D-2 Borrower Note*” means the Promissory Note dated the Delivery Date, in the principal amount of \$\_\_\_\_\_, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the portion of the Borrower Loan corresponding to the Series D-2 Governmental Note, which Series D-2 Borrower Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Permanent Commitment upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Borrower Loan Agreement. From the Delivery Date to the Permanent Purchase Date, the Servicer shall be Bank of America, N.A., unless otherwise appointed by the Funding Lender Representative. From and after the Permanent Purchase Date, the Servicer shall be the Permanent Funding Lender, unless otherwise appointed by the Funding Lender Representative.

“*State*” means the State of California.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Tax Certificate*” means, collectively, (i) the Tax Certificate executed by the Governmental Lender on the Delivery Date, (ii) the Borrower’s Use of Proceeds Certificate executed by the Borrower on the Delivery Date, and (iii) the Post-Issuance Compliance Certificate executed by the Governmental Lender and the Borrower on the Delivery Date.

“*Tax-Exempt Funding Loan*” means a portion of the Funding Loan in the maximum principal amount of \$\_\_\_\_\_, the limited repayment obligation of which is evidenced by the Series D-1 Governmental Note, and the interest on which is excluded from gross income for federal income tax purposes.

“*Tax-Exempt Governmental Note*” means the Series D-1 Governmental Note, evidencing the limited obligation to repay the Tax-Exempt Funding Loan.

“*Tax-Exempt Borrower Loan*” means a portion of the Borrower Loan in the maximum principal amount of \$\_\_\_\_\_, the repayment obligation of which is evidenced by the Series D-1 Borrower Note.

“*Tax-Exempt Borrower Note*” means the Series D-1 Borrower Note, evidencing the obligation to repay the Tax-Exempt Borrower Loan.

“*Tax Regulatory Agreement*” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of June 1, 2025, between the Governmental Lender and the Borrower, relating to the Project Site.

“*Taxable Funding Loan*” means a portion of the Funding Loan in the maximum principal amount of \$\_\_\_\_\_, the limited repayment obligation of which is evidenced by the Series D-2 Governmental Note, and the interest on which is not excluded from gross income for federal income tax purposes.

“*Taxable Governmental Note*” means the Series D-2 Governmental Note, evidencing the limited obligation to repay the Taxable Funding Loan.

“*Taxable Borrower Loan*” means a portion of the Borrower Loan in the maximum principal amount of \$\_\_\_\_\_, the repayment obligation of which is evidenced by the Series D-2 Borrower Note.

“*Taxable Borrower Note*” means the Series D-2 Borrower Note, evidencing the obligation to repay the Taxable Borrower Loan.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants under the Financing Documents: (a)(i) to be held harmless and indemnified, (ii) to be paid its fees and



expenses and the Rebatable Arbitrage pursuant to Section 4.12 hereof, (iii) to give or withhold consent to amendments, changes, modifications and alterations, (iv) to have access to the Project and Project records, and (v) to receive notices; (b) the Governmental Lender's rights under the Tax Regulatory Agreement, including but not limited to, rights to reimbursement and payment of its fees, costs and expenses; and (c) and the right to enforce all of the foregoing, subject to Section 7.06 of the Borrower Loan Agreement.

*"Window Period"* means the three (3) consecutive month period prior to the Maturity Date.

**Section 1.02 Interpretation.** The words "hereof," "herein," "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. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof. 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. References to the Series D-1 Governmental Note or the portion of the Funding Loan relating thereto as "tax-exempt" or to the "tax-exempt status" of such Governmental Note or such portion of the Funding Loan or to the exclusion of interest on such portion of the Funding Loan from gross income, are to the exclusion of interest on such portion of the Funding Loan (other than any portion of the Funding Loan owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

## ARTICLE II

### THE FUNDING LOAN

#### **Section 2.01 Terms.**

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Initial Funding Lender to the Governmental Lender in accordance with Section 2.01(b) below. The proceeds of the Funding Loan shall be deposited with the Fiscal Agent and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Notes and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Notes and this Funding Loan Agreement.

(b) The Funding Loan shall be originated by the Initial Funding Lender on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Initial Funding Lender in installments directly to the Fiscal Agent for deposit to the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as Exhibit E hereto. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the

Governmental Notes in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The Initial Installment of the Funding Loan shall be advanced by the Initial Funding Lender on the Series D-1 Governmental Note and deposited in the Borrower Loan Fund on the Delivery Date for application as provided in Section 2.11. Thereafter, all remaining disbursements of the Funding Loan shall be drawn first on the Series D-1 Governmental Note, until the available credit thereunder is exhausted, and then upon the Series D-2 Governmental Note until the available credit thereunder is exhausted, but in no event shall the total of draws on the Governmental Notes in aggregate exceed the Authorized Amount; provided, however, that after the initial draw on the Series D-1 Governmental Note, at the request of the Borrower, the Series D-2 Governmental Note may be drawn on in any amount or amounts from time to time before the credit available under the Series D-1 Governmental Note is exhausted but in each such case only with the Servicer's approval and subject to the provisions of the Tax Certificate and the Code. 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 the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Initial Funding Lender and the Permanent Funding Lender and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Series D-1 Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by the Initial Funding Lender from time to time in accordance with the provisions of Section 2.01(b) above (the "**Record of Advances**"). The principal amount due on the Governmental Notes shall be only such amount as has been advanced by the Initial Funding Lender as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Funding Loan (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Permanent Funding Lender and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder pursuant to Section 2.01(b) above.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date (i) with respect to the Series D-1 Governmental Note at (A) the applicable Construction Phase Interest Rate during the Construction Phase and (B) the Permanent Phase Interest Rate during the Permanent Phase, and (ii) with respect to the Series D-2 Governmental Note, at the applicable Construction Phase Interest Rate. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on the Maturity Date, subject to optional and mandatory prepayment prior to maturity as provided in Article III hereof. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date. If the Permanent Lender purchases the Funding Loan upon Conversion, principal and interest shall be paid as provided in the Permanent Loan Documents.

(f) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

In no event will a payment be due and payable on the Funding Loan or the Governmental Notes except to the extent such amount is due and payable under the Borrower Loan Agreement and the Borrower Notes. In the event of any conflict as to the payment terms of the Governmental Notes and the Borrower Notes, the terms of the Borrower Notes shall control and the terms of the Governmental Notes shall be deemed to be a product of scrivener's error to the extent of such conflict and shall be deemed without further action to be reformed to the extent necessary to correct such error. Any writing duly executed by the parties to memorialize the reformation of the Governmental Notes shall be deemed to express the original mutual intent of the parties for the payment terms of the Governmental Notes to match those of the Borrower Notes, rather than as a modification or amendment of such original intent. Notwithstanding the foregoing provisions of this paragraph, no such reformation shall increase the obligations of the Governmental Lender under the Funding Loan or the Governmental Notes except to the extent payable solely from the Pledged Security. Further, no such reformation shall cause the Governmental Lender's obligations hereunder and under the Governmental Notes to be other than limited obligations as set forth in Section 2.03 below.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Notes, and the payment and performance of all amounts and obligations of the Borrower under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (excepting, however, in each case, the Unassigned Rights) (said property being herein referred to as the "**Pledged Security**") for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Borrower Loan Agreement, the Borrower Notes, the Security Instrument and the other Borrower Loan Documents, including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings

thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Pledged Security pursuant to this Section 2.02 for the payment of the principal of, premium, if any, and interest on the Governmental 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 Delivery Date. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof. The Funding Lender shall have, in connection with the security interest granted hereunder, all rights and remedies available to a secured party under the Uniform Commercial Code as enacted in the State.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Notes; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 *Limited Obligations.*** Notwithstanding anything to the contrary herein or to the contrary in any Financing Document:

(a) The Funding Loan and the Governmental Notes are limited obligations of the Governmental Lender, payable solely from the Pledged Security. None of the Governmental Lender, the State or any political subdivision thereof (except the Governmental Lender, to the limited extent authorized by the Act and set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or the Governmental Notes or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and, notwithstanding anything herein or in any other instrument to the contrary, none of the Funding Loan or the Governmental Notes or any of the Governmental Lender's agreements or

obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

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

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

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

**Section 2.04 *Funding Loan Agreement Constitutes Contract.*** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 *Form and Execution.*** The Governmental Notes shall be in substantially the form attached as Exhibit A-1 and Exhibit A-2, and shall be delivered to the holders thereof in physical form and not as book-entry bonds. The Governmental Notes shall be executed on behalf of the Governmental Lender by the manual signature of an Authorized Officer of the Governmental Lender. The signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the delivery of the Governmental Notes or shall not have held such offices at the date of the Governmental Notes.

**Section 2.06 *Authentication.*** The Governmental Notes shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Notes, substantially in the form set forth in Exhibit A-1 and Exhibit A-2, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Notes shall be conclusive evidence that the Governmental Notes have been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.*** In the event a Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in Exhibit A-1 and Exhibit A-2, as applicable in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where a Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where a Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

(a) The Funding Loan, as evidenced by the Governmental 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 Funding Loan, as evidenced by the Governmental 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 Funding Loan, as evidenced by the Governmental Notes, and any transfers of the Funding Loan, as evidenced by the Governmental Notes, as provided herein, which books shall be maintained by the Fiscal Agent for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender. The Funding Loan, as evidenced by the Governmental Notes, shall initially be registered to the Initial Funding Lender. Upon the Conversion Date the Tax-Exempt Governmental Note shall be amended and restated as provided in the Permanent Commitment, and shall be registered to the Permanent Funding Lender.

(b) The Funding Lender may not sell or assign the Funding Loan and the Governmental Notes, except in whole to a transferee who agrees to become the “Funding Lender” under the Financing 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-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers a letter to the Governmental Lender and the Fiscal Agent substantially in the form attached hereto as Exhibit

C setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified 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 Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. 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 Funding Loan, as evidenced by the Governmental Notes.

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

**Section 2.09 *Securitization; Allocation of Funding Loan Interest.*** In accordance with the provisions of Section 2.08 hereof, the Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event the Funding Lender Representative may direct the Fiscal Agent to make all future payments with respect to the Funding Loan to the appointed master servicer for that securitization (or an account designated by such master servicer), and the Fiscal Agent shall accept such direction from the Funding Lender Representative. In the event that the Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, the Funding Lender Representative may also give notice to the Fiscal Agent that the Funding Lender has agreed to allow the Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan (“**Additional Servicing Fee**”), which Additional Servicing Fee will equal no more than an annual 2 basis points with respect to the unpaid principal balance of the Governmental Notes, in which event the Fiscal Agent shall accept and pay to the Funding Lender such lesser amount of interest received from the Servicer and shall consider such payment to be in full compliance with the terms of the Governmental Notes, the Borrower Notes and all other Financing Documents with regard to the interest owed on the Funding Loan.

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Notes.*** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Notes and deliver the Governmental Notes to the Initial Funding Lender upon satisfaction of the following conditions, in the sole discretion of the Governmental Lender or the Funding Lender, as applicable:

(a) Receipt by the Funding Lender and the Governmental Lender of executed counterparts of this Funding Loan Agreement, the Borrower Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) Receipt by the Funding Lender and the Governmental Lender of an opinion of counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and

existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Notes and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) Receipt by the Fiscal Agent of the initial advance of the proceeds of the Funding Loan by the Initial Funding Lender in the amount of the Initial Installment set forth in Section 2.01(b) hereof;

(d) Receipt by the Fiscal Agent of the executed Borrower Notes and an endorsement of the Borrower Notes by the Governmental Lender in favor of the Fiscal Agent;

(e) Receipt by the Funding Lender of a copy of the executed Security Instrument, the Assignment, the Permanent Commitment and the Construction Continuing Covenant Agreement;

(f) Receipt by the Funding Lender and the Governmental Lender of an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) Receipt by the Funding Lender and the Governmental Lender of a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the Governmental Notes have been executed and delivered by the Governmental Lender and constitute a valid and binding special limited obligation of the Governmental Lender, that the Funding Loan Agreement has been executed and delivered by the Governmental Lender and constitutes a valid and binding obligation of the Governmental Lender, subject to customary expectations and the interest on the Series D-1 Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) Receipt by the Funding Lender of a certified copy of the Resolution;

(i) Receipt by the Fiscal Agent of the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Notes to the Initial Funding Lender upon funding to the Fiscal Agent of the Initial Installment of the Funding Loan;

(j) Receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Borrower Loan Agreement;

(k) Receipt by the Fiscal Agent and the Governmental Lender of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C;



(l) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Issuance Deposit, in accordance with Section 3.03 of the Borrower Loan Agreement, and delivery of the Borrower Equity Deposit into the Borrower Equity Account pursuant to Section 2.11(c) hereof; and

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

**Section 2.11 *Establishment of Borrower Loan Fund; Application of Funding Loan Proceeds and Other Money.***

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Borrower Loan Fund and therein a Project Account (with a Tax-Exempt Project Subaccount and a Taxable Project Subaccount therein) and a Borrower Equity Account. No amount shall be charged against the Borrower Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender in the Initial Installment on the Delivery Date and thereafter on a drawdown basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds to the credit of the applicable subaccount of the Project Account of the Borrower Loan Fund. Amounts in the Borrower Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Borrower Loan Agreement. Upon the disbursement of all amounts in the Borrower Loan Fund, the Fiscal Agent shall close the Borrower Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account, and (ii) to the Servicer the Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Borrower Loan pursuant to the Borrower Loan Agreement and the Fiscal Agent shall make the initial disbursements of amounts in the Borrower Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

**Section 2.12 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary (but subject to the last two sentences of this paragraph (a)), 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 Borrower Notes and all fees due under the Borrower Loan Agreement shall be paid by the Borrower to the Servicer; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Borrower Loan Fund as required under Section 4.02 hereof during the Construction Phase. The Servicer shall

remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Borrower Loan, to the Fiscal Agent. The Fiscal Agent shall remit to the Funding Lender Representative payments of principal of, Prepayment Premiums, if any, and interest on the Governmental Notes and all fees due under the Funding Loan Agreement, using funds collected from the Borrower by the Servicer and remitted to the Fiscal Agent. 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 Ordinary Fiscal Agent's Fees and Expenses 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 and pursuant to invoices issued by the Servicer for the Governmental Lender Fee and the Ordinary Fees and Expenses of the Fiscal Agent. 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. Notwithstanding any provision in this paragraph (a) to the contrary, during the Construction Phase, the Initial Funding Lender may direct from time to time draws on any Governmental Note to pay accrued but unpaid interest with respect to such Governmental Note, and such draws shall be deemed to constitute corresponding draws on the related Borrower Note for the payment of the corresponding interest on the Borrower Loan. Any such draw for the payment of interest during the Construction Phase shall be remitted directly to the payee of the applicable Governmental Note without direction from the Borrower and without collection or remittance of such draw by the Servicer or the Fiscal Agent.

(b) If the Governmental Notes are sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Borrower Notes and all fees due hereunder and under the Borrower Loan Agreement are being made by or for the account of the Borrower to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect from the Borrower loan payments or fee payments pursuant to the Borrower Loan Agreement, except at the express written direction of the Funding Lender Representative; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Borrower Loan Fund as required under Section 4.02 hereof during the Construction Phase. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect from the Borrower loan payments and fee payments under the Borrower Loan Agreement and remit such payments in accordance with this Funding Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.13 Conversion.** If the Notice of Conversion is issued in the timeframe required under the Permanent Commitment, Conversion will occur on the Conversion Date indicated in such Notice of Conversion and, notwithstanding any other provision of this Funding Loan Agreement including without limitation all provisions of this Funding Loan Agreement relating to the Permanent Phase, the Permanent Loan Documents shall be executed, delivered and assigned to the Permanent

Lender in accordance with the Permanent Commitment. If the Notice of Conversion is not so issued, Conversion will not occur, and the Permanent Funding Lender will have no obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project, and the Permanent Lender Documents shall have no force or effect.

**Section 2.14 *Recycling Transactions.*** Notwithstanding any provision of this Funding Loan Agreement or the Governmental Lender Notes to the contrary, the Governmental Lender shall be permitted to direct any 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 Governmental Lender Notes, so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of the Governmental Lender Notes. 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.

### ARTICLE III

#### PREPAYMENT OF THE FUNDING LOAN

**Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.***

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment by the Governmental Lender in whole or in part from the funds that the Governmental Lender received from or on behalf of the Borrower upon optional prepayment of the Borrower Loan in accordance with the notice and other prepayment provisions set forth in the Borrower Notes.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Borrower Notes), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory payment or prepayment of the Borrower Loan pursuant to the Borrower Notes;

(ii) in part, on the Interest Payment Date next following the completion of the construction of the Project, to the extent amounts remaining in the Project Account of the Borrower Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment, in the amount of such Payment; or

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Permanent Funding Lender prior to the Forward Commitment Maturity Date.

**Section 3.02 *Notice of Prepayment.*** Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date

fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

## **ARTICLE IV**

### **REVENUES AND FUNDS**

#### **Section 4.01   *Pledge of Revenues and Assets; Establishment of Funds.***

The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Notes by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Notes. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery 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.

In addition to the Borrower Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a)     Revenue Fund;
- (b)     Loan Payment Fund;
- (c)     Loan Prepayment Fund;
- (d)     Administration Fund;
- (e)     Cost of Issuance Fund; and
- (f)     Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding

Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

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

#### **Section 4.02 *Borrower Loan Fund.***

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the applicable subaccount of the Project Account of the Borrower Loan Fund upon receipt of each advance thereof as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Borrower Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Notes), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Borrower Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project, and will be disbursed pursuant to a Requisition, except as otherwise set forth in Section 4.02(c) below. In addition, amounts in the Borrower Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. Unless the Fiscal Agent is instructed otherwise by the Funding Lender Representative, the Fiscal Agent shall automatically transfer amounts from the Borrower Equity Account of the Borrower Loan Fund to the Administration Fund to pay to the appropriate party its accrued fees that are included in the Fee Component that are due and payable as set forth herein or upon receipt of an invoice, without any need for a Requisition or other written direction. Unless the Fiscal Agent is instructed otherwise by the Initial Funding Lender, the Fiscal Agent shall automatically transfer amounts in the Borrower Equity Account of the Borrower Loan Fund to the Loan Payment Fund to pay interest on the Borrower Loan and Funding Loan without any need for a Requisition or other written direction. Except for the foregoing transfers, the Fiscal Agent shall make disbursements from the respective accounts of the Borrower Loan Fund only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Borrower Loan Fund complies with the terms, conditions and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Borrower Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Borrower Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Borrower Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Borrower Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, as evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax-exempt status of the Series D-1 Governmental Note; provided, that any amounts in the Project Account of the Borrower Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund to the extent required by the Tax Certificate. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Borrower Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer and the Borrower Equity Account shall be closed.

(f) Amounts on deposit in the Borrower Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Borrower Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Borrower Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

(g) There is hereby created within the Borrower Equity Account a Deferred Fee Subaccount. Notwithstanding any other provision of this Funding Loan Agreement, the Fiscal Agent shall deposit any amounts delivered to the Fiscal Agent by or for the account of the Servicer or the Borrower with written instructions to deposit such amounts in the Deferred Fee Subaccount. If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Governmental Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent.

#### **Section 4.03    *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule after Conversion); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Borrower Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred from the Borrower Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04    *Application of Loan Payment Fund.*** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Loan Prepayment Fund.*** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 *Administration Fund.*** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund, together with amounts transferred by the Fiscal Agent from the Borrower Loan Fund for deposit to the Administration Fund pursuant to Section 4.02. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Borrower Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration 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 and the Servicer 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. Upon payment by the Borrower or the



Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date.

If there is no Servicer (or if the Funding Lender Representative elects to have the Fiscal Agent collect loan payments and fee payments due under the Borrower Loan Agreement as set forth in Section 2.12 hereof), the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Governmental Lender Fee not later than 30 days prior to the due date for payment of the Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

#### **Section 4.07   *[Reserved]*.**

**Section 4.08   *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in investments of the type described in subparagraph (g) of the definition of Qualified Investments which shall have the same maturity and other restrictions as set forth above. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal,

payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be provided relating to the security transactions as they occur.

Except as otherwise provided in the following paragraph of this Section, the Governmental Lender and the Borrower (by their execution of the Borrower Loan Agreement) each covenant that all investments of amounts deposited in any fund or account created by or pursuant to this Funding Loan Agreement, or otherwise containing Gross Proceeds of the Tax-Exempt Funding Loan or the Series D-1 Governmental Note (within the meaning of Section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Funding Loan Agreement or the Code) at Fair Market Value.

The Governmental Lender and the Borrower (by their execution of the Borrower Loan Agreement) each covenant that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in any reserve fund shall be valued at their present value (within the meaning of Section 148 of the Code).

**Section 4.09** *[Reserved]*.

**Section 4.10** *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established by the Fiscal Agent hereunder.

**Section 4.11** *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Borrower Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12** *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate

Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Sections 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Borrower Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(ii) Not later than 60 days after the payment in whole of the Tax-Exempt Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Borrower Loan Agreement and this Section 4.12,

and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Tax-Exempt Funding Loan corresponding to the Series D-1 Governmental Note.

Any funds remaining in the Rebate Fund after payment in full of Tax-Exempt Funding Loan corresponding to the Series D-1 Governmental Note and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower and the Governmental Lender, until six years after the date on which the Series D-1 Governmental Note is no longer outstanding, such records concerning the investments of the gross proceeds of that portion of the Funding Loan corresponding to the Series D-1 Governmental Note and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebateable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series D-1 Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

**Section 4.13 *Cost of Issuance Fund.*** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses, provided that no requisition shall be required for the payment of Costs of Issuance set forth on the closing memorandum delivered to the Fiscal Agent on the Delivery Date. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 *Reports From the Fiscal Agent.*** The Fiscal Agent shall, on or before the fifteenth (15<sup>th</sup>) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

(i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;

(ii) the amount on deposit with it at the end of such month to the credit of each fund and account;

(iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and

(iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** Subject to the provisions of Section 2.03 and Article III hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Notes, as and when the same shall become due, all in accordance with the terms of the Governmental Notes and this Funding Loan Agreement, to the extent of repayments and prepayments received by the Governmental Lender with respect to the Borrower Loan.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Notes and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Funding Loan, at the expense of the Borrower, provided, however, that no such act or instrument shall change the essential economic terms of the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

(i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans of which it has received written notice;

(ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;

(iii) the occurrence of any default or Event of Default of which the Governmental Lender has received written notice;

(iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes, of which it has received written notice; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Books and Records.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Servicer, Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate, provided that the Fiscal Agent shall have no duty to so designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) enforce or cause to be enforced all obligations of the Borrower requiring that the proceeds of the Series D-1 Governmental Note are used in a manner such that the Series D-1 Governmental Note will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects;

(ii) not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the Series D-1 Governmental Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series D-1 Governmental Note would have caused the Series D-1 Governmental Note to be an “arbitrage bond” within the meaning of section 148 of the Code and regulations promulgated under the Code (the “**Regulations**”);

(iii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first receives written notice of any such violation;

(iv) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Series D-1 Governmental Note to be includable in gross income for federal income tax purposes;

(v) whenever and so often as requested by the Funding Lender, do and perform all acts and things permitted by law and necessary in order to assure that interest paid by the Governmental Lender on the Series D-1 Governmental Note will be excluded from the gross income of the holders of the Series D-1 Governmental Note, for federal income tax purposes;

(vi) assure that the California Debt Limit Allocation Committee has transferred a portion of the State of California’s private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Series D-1 Governmental Note;

(vii) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series D-1 Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

(viii) require that, from the proceeds of the Series D-1 Governmental Note and investment earnings thereon, an amount not in excess of exceed two percent (2%) of the proceeds of the Series D-1 Governmental Note, will be used for costs of issuance of the Series D-1 Governmental Note, all within the meaning of section 147(g)(1) of the Code (for this purpose, if the fees of the Initial Funding Lender are retained as a discount on the purchase of the Series D-1 Governmental Note, such retention shall be deemed to be an expenditure of proceeds of the Series D-1 Governmental Note for said fees;

(ix) require that not less than 95 percent of the net proceeds of the Series D-1 Governmental Note (within the meaning of section 150(a)(3) of the Code) are paid for Qualified Project Costs;

(x) require that less than twenty-five percent (25%) of the proceeds of the Series D-1 Governmental Note shall be used, directly or indirectly, for the acquisition of land;

(xi) require that no proceeds of the Series D-1 Governmental Note shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 145(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with Proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Series D-1 Governmental Note;

(xii) not permit any proceeds of the Series D-1 Governmental Note to be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises, nor permit any portion of the proceeds of the Series D-1 Governmental Note to be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project; and

(xiii) elect, and hereby does elect, to have the Project meet the requirements of section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units in the Project shall be occupied by persons or families whose Adjusted Income (as defined in the Tax Regulatory Agreement) is sixty percent (60%) or less of Median Income for the Area (as defined in the Tax Regulatory Agreement), adjusted for household size.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall each execute, deliver and comply with the applicable provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

For purposes of this Section 5.07(a): (1) 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 Tax Regulatory Agreement and the Tax Certificate, and the Borrower's compliance therewith; (2) the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's knowledge and control; (3) no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender; and (4) in complying with the foregoing covenants, the Governmental Lender may rely on an opinion of Bond Counsel.

(b) *Fiscal Agent's Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Tax-Exempt Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any



investment or other use of the money in the funds or accounts created hereunder which would cause the Series D-1 Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Series D-1 Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Tax-Exempt Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Tax-Exempt Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Tax-Exempt Funding Loan would cause the Series D-1 Governmental Note to become an “arbitrage bond,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Series D-1 Governmental Note from becoming an “arbitrage bond,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

In the event of any conflict between this Section 5.07 and the Tax Certificate, the terms of the Tax Certificate shall control.

**Section 5.08 *Representations and Warranties of the Governmental Lender.*** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a municipal corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to execute and deliver the Governmental Notes and to execute and deliver this Funding Loan Agreement, the Borrower Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

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 5.09 *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 so long as the Borrower is not in default (beyond any applicable notice and cure period) under the Borrower Loan Agreement.

**Section 5.10 *Immunities and Limitations of Responsibility of Governmental Lender.***

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

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

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section 6.01 of the Borrower Loan Agreement and Section 7 of the Tax Regulatory Agreement. Such indemnities shall survive payment of the Funding Loan and discharge of this Funding Loan Agreement.

## **ARTICLE VI**

### **DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER**

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an “Event of Default”) under this Funding Loan Agreement:

(a) failure to pay the principal of, premium, if any, or interest on the Funding Loan, as evidenced by the Governmental Notes, when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) subject to Section 5.09, failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Notes and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Borrower Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent or the Funding Loan Representative will endeavor to provide a courtesy copy of any notice given to the Governmental Lender to the Borrower. However, the failure to provide such courtesy copy will not affect the validity or sufficiency of any notice provided to the Governmental Lender.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

## **Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender (with a courtesy notice given to the Borrower), declare the principal of the Funding Loan, as evidenced by the Governmental Notes, and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, the Borrower, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and

expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Borrower Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Borrower Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Borrower Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter 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 through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Notes shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST**: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Notes shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

(e) To the payment of any and all amounts due under the Financing Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Servicer and the Rebate Analyst.

(f) 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 6.06 *Remedies Not Exclusive.*** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 *Fiscal Agent May Enforce Rights Without Governmental Notes.*** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Notes or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 *[Reserved]*.**

**Section 6.09 *Termination of Proceedings.*** In case the Fiscal Agent (at the written direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *Waivers of Events of Default.*** The Fiscal Agent shall waive any Event of Default hereunder and its consequences (except with respect to Unassigned Rights) and rescind any

declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Borrower Loan; Remedies Under the Borrower Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Borrower Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Borrower Notes, the Security Instrument and the other Financing Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Borrower Notes to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Borrower Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized. Prior to making such an assignment, the Fiscal Agent shall have received a No Adverse Effect Opinion with respect to such assignment of Pledged Security.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Borrower Loan Agreement, the Borrower Notes or the Security Instrument, whether or not the Governmental Notes have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 *Substitution.*** Upon receipt of written notice from the Funding Lender Representative and the written approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement in connection with a transfer of the Project, the Fiscal Agent shall exchange the Borrower Notes and the Security Instrument for new Borrower Notes and a new Security Instrument, evidencing and securing a new loan (the "New Borrower Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to

accepting a New Borrower Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Security Instrument has been modified as necessary to be applicable to the New Borrower Loan, and (ii) a No Adverse Effect Opinion with respect to such exchange and modification.

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01 *Standard of Care.*** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

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

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:



(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Notice as permitted hereunder or under the Borrower Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal

Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Notes (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Notes issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement 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 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Sections 6.03 and 6.08 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Borrower Loan Agreement and the Tax Regulatory Agreement and 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 delivery of the Governmental Notes.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Notes authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 *[Reserved]*.**

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Borrower Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money

designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Borrower Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the Borrower Loan Documents, this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Notes or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Notes or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers in the State and approved in writing by the Governmental Lender. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything

herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause written notice of such succession to be delivered to the Funding Lender within 10 days of such succession.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the written consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative, with the written consent of the Governmental Lender, and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the duties of the Fiscal Agent hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent (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 if applicable, the retiring Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction, at the expense of the Borrower, to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender. No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

**Section 7.13 *[Reserved].***

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Borrower Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies 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 or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary, and the Fiscal Agent is hereby authorized upon written notice to the Governmental Letter, Funding Lender Representative and the Borrower, and with the consent of the Governmental Lender and the Funding Lender Representative, to appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate

fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so 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, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate 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 co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Notes shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent, at any time by an instrument in writing with the written concurrence of the Governmental Lender by an Authorized Officer, may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall

join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *[Reserved]*.**

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall, at the expense of the Borrower, at the direction of the Servicer, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.



## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Notes may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments attached as exhibits to the Permanent Commitment on the Conversion Date.

**Section 8.03 *Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Notes, the Borrower Loan Agreement, the Borrower Notes, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) a No Adverse Effect Opinion with respect to such amendment, change or modification, and (B) an opinion of counsel acceptable to the Funding Lender Representative and the Governmental Lender to the effect that any such amendment, change or modification 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 IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Notes, in any one or more of the following ways:

- (a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
- (b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Permanent Commitment) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
- (c) by the delivery of the Governmental Notes by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid, or caused to be paid, all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Notes and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Notes, and the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Permanent Commitment) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Borrower Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities or a combination of moneys and securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Series D-1 Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amount of money or securities or a combination of moneys and securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and a No Adverse Effect Opinion; (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid; and (f) all fees and expenses of the Fiscal Agent have been paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to the Maturity Date or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to

the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.***

Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Notes remaining unclaimed for two years after the Maturity Date or earlier payment date to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

**ARTICLE X**

**[INTENTIONALLY OMITTED]**

**ARTICLE XI**

**MISCELLANEOUS**

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Borrower Loan Agreement. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Notes is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan are inconsistent with the Borrower Loan Documents, then the Borrower Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the

effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 11.04 Notices.**

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

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

With copies to:                      Office of the City Attorney  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102-4682  
Attention: Finance Team  
E-mail: cityattorney@sfgov.org

City and County of San Francisco  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, California 94102  
Attention: City Controller

The Fiscal Agent:	U.S. Bank Trust Company, National Association 1 California Street, Suite 1000 San Francisco, California 94111 Attention: Global Corporate Trust Telephone: (415) 677-3593
Funding Lender Representative:	Bank of America, N.A. 4500 Amon Carter Blvd, 2 <sup>nd</sup> Floor Mailcode: TX2-979-02-22 Fort Worth, TX 76155 Attention: Construction Servicing (Real Estate) Loan Administration Manager
And a copy to:	Buchalter, A Professional Corporation 1000 Wilshire Boulevard, Ste 1500 Los Angeles, CA 90017 Attention: Michael Williamson, Esq. Email: mwilliamson@buchalter.com Matter No.: B0965-0841
The Borrower:	160 Freelon Housing Partners, L.P. c/o The Related Companies of California, LLC 44 Montgomery Street, Suite 1310 San Francisco, CA 94104 Attention: Ann Silverberg Email: asilverberg@related.com Telephone: (415) 677-4009
With a copy to:	160 Freelon Housing Partners, L.P. c/o The Related Companies of California, LLC 18201 Von Karman Avenue, Suite 900 Irvine, CA 92612 Attention: Asset Management
And a copy to:	SFHDC 160 Freelon LLC c/o San Francisco Housing Development Corporation 4439 Third Street San Francisco, CA 94124 Attention: David J. Sobel Email: david@sfhdc.org
With copies to: (which copy shall not constitute notice to Borrower)	Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, Suite 5880 Los Angeles, CA 90071 Attn: Nicole Deddens Email: ndeddens@bocarsly.com  Goldfarb & Lipman LLP 1300 Clay Street, 11 <sup>th</sup> Floor

Oakland, CA 94612  
Attn: Lynn Hutchins  
Email: lhutchins@goldfarbblipman.com

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

Banc of America, CDC Special Holding Company, Inc.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management

With a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Ste 1500  
Los Angeles, CA 90017  
Attention: Mercedes Martin, Esq.  
Email: mmartin@buchalter.com  
Matter No.: B0965-0842

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent is authorized and agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

#### **Section 11.05 *Funding Lender Representative.***

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Notes. Upon the Conversion Date, the Permanent Funding Lender shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent

written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Notes and the Loans, subject to the Unassigned Rights.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 *Laws Governing Funding Loan Agreement.*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse with Respect to Governmental Lender.*** Notwithstanding anything to the contrary herein or to the contrary in any Financing Document, no recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Notes shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby

secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Notes. The Funding Lender's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth in Article VI hereof and, if an Event of Default also exists under the Borrower Loan Agreement or the Borrower Notes, to commence foreclosure under the Security Instrument and the other Borrower Loan Documents and to exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under the Governmental Notes, the Funding Lender shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender or the Funding Lender may have against the Borrower.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

**Section 11.11 *Electronic Transactions.*** The transactions described in this Funding Loan Agreement may be conducted and related documents and may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 11.12 *City Contracting Provisions.*** The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit G to this Funding Loan Agreement, which is incorporated in and made a part of this Funding Loan Agreement by this reference.

[Signature Pages Follow]



**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

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

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO 160 FREELON FUNDING LOAN AGREEMENT]

BANK OF AMERICA, N.A., a national banking  
association

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

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

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

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO 160 FREELON FUNDING LOAN AGREEMENT]

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

By: \_\_\_\_\_  
Authorized Signer

[FISCAL AGENT'S SIGNATURE PAGE TO 160 FREELON FUNDING LOAN AGREEMENT]

EXHIBIT A-1

**FORM OF SERIES D-1 GOVERNMENTAL NOTE**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**SERIES 2025D-1**

US \$ \_\_\_\_\_

June \_\_, 2025

FOR VALUE RECEIVED, the undersigned, CITY AND COUNTY OF SAN FRANCISCO (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of \_\_\_\_\_ (the “**Funding Lender**”), and its assigns, the maximum principal sum of \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Housing Revenue Note (this “**Governmental Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of June 1, 2025 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and U.S. Bank Trust Company, National Association (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Governmental Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to 160 Freelon Housing Partners, L.P. (the “**Borrower**”) pursuant to the Borrower Loan Agreement dated as of June 1, 2025 (the “**Borrower Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Governmental Note at any time shall be an amount equal to the portion of the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement corresponding to the Series D-1 Borrower Note, and not otherwise paid or prepaid.

This Governmental Note is one of two Governmental Notes evidencing the obligation of the Obligor to repay the Funding Loan to the Funding Lender (collectively, the “Governmental Notes”). The other Governmental Note is designated the “City and County of San Francisco, California Multifamily Housing Revenue Note (160 Freelon) Series 2025D-2 (Taxable),” and is dated and delivered concurrently herewith in the aggregate principal amount of \$ \_\_\_\_\_. Such other Governmental 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 Series D-2 Borrower Note in the same principal amount and bearing the same series designation as such other Governmental Note.

1. **Defined Terms.** As used in this Governmental Note, (i) the term “Funding Lender” means the holder of this Governmental Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Governmental Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Governmental Note shall have the meanings given to such terms in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing [July 1, 2025], interest on this Governmental Note at (i) the applicable Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Governmental Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Governmental Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest shall accrue on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances corresponding to the Series D-1 Borrower Note.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Governmental Note in full on [July 1, 2059] (the “**Maturity Date**”) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Governmental Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Governmental Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Governmental Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Governmental Note, any other document evidencing or securing the Funding Loan, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of

such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Governmental Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Governmental Note and all other third-party obligors.

10. **Default Rate.** So long as (a) any monthly installment under this Governmental Note remains past due, (b) any other Event of Default has occurred and is continuing, or (c) a Determination of Taxability has occurred and is continuing, interest under this Governmental Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment, the occurrence of any other Event of Default, or the occurrence of a Determination of Taxability, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

11. **Loan Charges.** Neither this Governmental Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Governmental Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Governmental Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Governmental Note.

12. **Governing Law.** This Governmental Note shall be governed by the internal laws of the State of California without regard to conflicts of laws principles.

13. **Captions.** The captions of the paragraphs of this Governmental Note are for convenience only and shall be disregarded in construing this Governmental Note.

14. **Address for Payment.** All payments due under this Governmental Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

15. **Series D-1 Borrower Note.** Anything herein or in the Funding Loan Agreement to the contrary notwithstanding, amounts shall not be due and payable hereunder except at the rates, in the amounts, and at the times due and payable under the Series D-1 Borrower Note. In the event of any conflict between the payment terms of the Series D-1 Borrower Note and this Governmental Note, the terms of the Series D-1 Borrower Note shall control, provided, however, that the Governmental Lender's obligation hereunder shall be limited as set forth herein and payable solely from the Pledged Security.

16. **Limited Obligation.** This Governmental Note is a limited obligation of the Obligor, payable solely from the Pledged Security pledged and assigned under the Funding Loan Agreement. None of the Obligor, the State, or any political subdivision thereof (except the Obligor, 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 this Governmental Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this Governmental Note or any of the Obligor's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

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

18. **Recycling Transactions.** Notwithstanding any provision of this Governmental Lender Note or the Funding Loan Agreement to the contrary, the Governmental Lender shall be permitted to direct 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.

This Governmental Note may not be changed orally.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Governmental Note to be duly executed by the manual signature of its Authorized Officer as of the date first set forth above.

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Daniel Lurie  
Mayor



## **CERTIFICATE OF AUTHENTICATION**

This Governmental 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

By: \_\_\_\_\_  
Authorized Signer

EXHIBIT A-2

**FORM OF SERIES D-2 GOVERNMENTAL NOTE**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**SERIES 2025D-2 (TAXABLE)**

US \$ \_\_\_\_\_

June \_\_, 2025

FOR VALUE RECEIVED, the undersigned, CITY AND COUNTY OF SAN FRANCISCO (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of \_\_\_\_\_ (the “**Funding Lender**”), and its assigns, the maximum principal sum of \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Housing Revenue Note (this “**Governmental Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of June 1, 2025 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and U.S. Bank Trust Company, National Association (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Governmental Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to 160 Freelon Housing Partners, L.P. (the “**Borrower**”) pursuant to the Borrower Loan Agreement dated as of June 1, 2025 (the “**Borrower Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Governmental Note at any time shall be an amount equal to the portion of the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement corresponding to the Series D-2 Borrower Note, and not otherwise paid or prepaid.

This Governmental Note is one of two Governmental Notes evidencing the obligation of the Obligor to repay the Funding Loan to the Funding Lender (collectively, the “**Governmental Notes**”). The other Governmental Note is designated the “City and County of San Francisco, California Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1,” and is dated and delivered concurrently herewith in the aggregate principal amount of \$ \_\_\_\_\_. Such other Governmental 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 Series D-1 Borrower Note in the same principal amount and bearing the same series designation as such other Governmental Note.

1. **Defined Terms.** As used in this Governmental Note, (i) the term “**Funding Lender**” means the holder of this Governmental Note, and (ii) the term “**Indebtedness**” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Governmental Note or the Funding Loan Agreement. “**Event of Default**” and other capitalized terms used but not defined in this Governmental Note shall have the meanings given to such terms in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing [July 1, 2025], interest on this Governmental Note at the applicable Construction Phase Interest Rate, and shall also pay interest on this Governmental Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Governmental Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest shall accrue on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances corresponding to the Series D-2 Borrower Note.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Governmental Note in full on [\_\_\_\_\_, 20\_\_] (the “**Maturity Date**”) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Governmental Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Governmental Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Governmental Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Governmental Note, any other document evidencing or securing the Funding Loan, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the

Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Governmental Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Governmental Note and all other third-party obligors.

10. **Default Rate.** So long as (a) any monthly installment under this Governmental Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Governmental Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment, or the occurrence of any other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

11. **Loan Charges.** Neither this Governmental Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Governmental Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Governmental Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Governmental Note.

12. **Governing Law.** This Governmental Note shall be governed by the internal laws of the State of California without regard to conflicts of laws principles.

13. **Captions.** The captions of the paragraphs of this Governmental Note are for convenience only and shall be disregarded in construing this Governmental Note.

14. **Address for Payment.** All payments due under this Governmental Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

15. **Series D-2 Borrower Note.** Anything herein or in the Funding Loan Agreement to the contrary notwithstanding, amounts shall not be due and payable hereunder except at the rates, in the

amounts, and at the times due and payable under the Series D-2 Borrower Note. In the event of any conflict between the payment terms of the Series D-2 Borrower Note and this Governmental Note, the terms of the Series D-2 Borrower Note shall control, provided, however, that the Governmental Lender's obligation hereunder shall be limited as set forth herein and payable solely from the Pledged Security.

16. **Limited Obligation.** This Governmental Note is a limited obligation of the Obligor, payable solely from the Pledged Security pledged and assigned under the Funding Loan Agreement. None of the Obligor, the State, or any political subdivision thereof (except the Obligor, 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 this Governmental Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this Governmental Note or any of the Obligor's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

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

This Governmental Note may not be changed orally.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Governmental Note to be duly executed by the manual signature of its Authorized Officer as of the date first set forth above.

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Daniel Lurie  
Mayor

## **CERTIFICATE OF AUTHENTICATION**

This Governmental 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

By: \_\_\_\_\_  
Authorized Signer

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

U.S Bank Trust Company, National Association  
1 California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust

160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
Attention: Director  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103

Re:     \$ \_\_\_\_\_ CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
          MULTIFAMILY HOUSING REVENUE NOTE (160 Freelon)  
          Series 2025D-1  
  
          \$ \_\_\_\_\_ CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
          MULTIFAMILY HOUSING REVENUE NOTE (160 Freelon)  
          Series 2025D-2 (TAXABLE)

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Multifamily Housing Revenue Notes captioned above, dated June \_\_, 2025, delivered pursuant to the Funding Loan Agreement dated as of June 1, 2025 (the “**Funding Loan Agreement**”), among Bank of America, N.A., in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City and County of San Francisco (the “**Governmental Lender**”) and U.S. Bank Trust Company, National Association (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

SIGNATURE



Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BANK OF AMERICA, N.A.

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

## EXHIBIT C

### FORM OF TRANSFeree REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
Attention: Director  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103

U.S Bank Trust Company, National Association  
1 California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust

Re: \$\_\_\_\_\_ CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE (160 Freelon)  
Series 2025D-1

\$\_\_\_\_\_ CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE (160 Freelon)  
Series 2025D-2 (TAXABLE)

Ladies and Gentlemen:

The undersigned (the "Funding Lender") hereby acknowledges receipt of the Multifamily Housing Revenue Note[s] captioned above, dated June \_\_\_\_, 2025 ([collectively, ]the "Governmental Note") delivered pursuant to the Funding Loan Agreement dated as of June 1, 2025 (the "Funding Loan Agreement"), among Bank of America, N.A., in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the City and County of San Francisco (the "Governmental Lender") and U.S. Bank Trust Company, National Association (the "Fiscal Agent"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "Act") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "Qualified Transferee"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), 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 set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, transfer or sell the Funding Loan in accordance with the provisions of the Funding Loan Agreement [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER]; [provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to the Permanent Funding Lender on the Conversion Date].

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is 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.

6. The Funding Lender 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 Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

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

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[SIGNATURE BLOCK]

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

**EXHIBIT D**

**\$ \_\_\_\_\_**  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**Series 2025D-1**

**\$ \_\_\_\_\_**  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**Series 2025D-2 (TAXABLE)**

**COSTS OF ISSUANCE REQUISITION**  
**(Cost of Issuance Fund)**

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

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of June 1, 2025, by and among Bank of America, N.A., in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the City and County of San Francisco and U.S. Bank Trust Company, National Association, as Fiscal Agent, securing the Multifamily Housing Revenue Notes captioned above, dated June \_\_\_\_, 2025.

REQUISITION NO.:  
PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$ \_\_\_\_\_

The undersigned, on behalf of 160 Freelon Housing Partners, L.P., a California limited partnership duly organized and existing under the laws of the State of California (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg, President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel, Chief Executive Officer

**EXHIBIT E**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**Series 2025D-1**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(160 Freelon)**  
**Series 2025D-2 (TAXABLE)**

**BORROWER LOAN FUND REQUISITION**  
**(Borrower Loan Fund)**

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

You are requested to disburse funds from the Borrower Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of June 1, 2025, by and among Bank of America, N.A., in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City and County of San Francisco (the “**Governmental Lender**”) and U.S. Bank Trust Company, National Association, as Fiscal Agent (the “**Fiscal Agent**”), securing the Multifamily Housing Revenue Notes captioned above, each dated June \_\_\_\_, 2025.

REQUISITION NO.:  
PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ _____	from the Project Account
Account	\$ _____ from the Borrower Equity
Subaccount	\$ _____ from the Deferred Fee

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to June 22, 2023).

3. The undersigned certifies that:
- a. the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition [(1) from the Project Account will be used solely to pay a Cost of the Project allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement and (2) from the Borrower Equity Account will be used solely to pay a cost allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement];
  - c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Borrower Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
  - d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
  - e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
  - f. all of the funds being requisitioned in connection with the Series D-1 Borrower Note are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Borrower Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan corresponding to the Series D-1 Governmental Note (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
  - g. not less than 95% of the sum of:
    - (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Series D-1 Governmental Note; plus
    - (B) all amounts allocated to the Series D-1 Governmental Note previously disbursed from the Borrower Loan Fund;have been or will be applied by Borrower to pay the Costs of the Project;
  - h. Borrower is not in default under the Borrower Loan Agreement, the Construction Continuing Covenant Agreement or any other Borrower Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;



- i. no amounts being requisitioned hereby from the Project Account will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Series D-1 Governmental Note or pay debt service with respect to the Loans; and
- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items shall not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted construction of the Project as of the date of this Requisition: \_\_\_\_\_.

5. Percent of construction of the Project completed as of the date this request: \_\_\_\_\_%.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

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

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg, President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel, Chief Executive Officer

**APPROVED:**

**[for disbursements from Deferred Fee Subaccount pursuant to Section 4.02(g) of the Funding Loan Agreement:]**

**CITY AND COUNTY OF SAN FRANCISCO**

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

Name:

Title:

**[for all other Borrower Loan Fund Disbursements:]**

**[SERVICER SIGNATURE BLOCK]**

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

Name:

Title:

## **EXHIBIT F**

### **CONSTRUCTION PHASE INTEREST RATE**

The Construction Phase Interest Rate for each Governmental Note shall be as provided in the applicable Borrower Note.

## EXHIBIT G

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

The following provisions shall apply to this Funding Loan Agreement (this “Agreement”) as if set forth in the text hereof. Capitalized terms used but not defined in this Exhibit G shall have the meanings given in this Agreement. As used herein, the Funding Lender and Fiscal Agent shall together be known as the “Obligated Party.”

1. Nondiscrimination Requirements.

(a) *Nondiscrimination in Contracts.* The Obligated Party shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. The Obligated Party 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 Labor and Employment Code Article 131.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party to remove from, City facilities personnel of such Obligated Party 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 Laws Requiring Access for People with Disabilities. The Obligated Party acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. The Obligated Party shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. The Obligated Party agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Obligated Party, its employees, agents or assigns will constitute a material breach of this Agreement.

6. Sunshine Ordinance. The Obligated Party acknowledges that this Agreement and all records related to its formation, the Obligated Party's performance of services pursuant to this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 7920 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 Obligated Party 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 Obligated Party's board of directors; the Obligated Party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in such Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Obligated Party. The Obligated Party 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. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Obligated Party is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. The Obligated Party is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of

obligations in this Section. By signing and executing this Agreement, the Obligated Party certifies that it complies with Article 111.

9. Requiring Health Benefits for Covered Employees. Labor and Employment Code Article 121 applies to this contract. The Obligated Party shall comply with the requirements of Article 121. For each Covered Employee, the Obligated Party shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If the Obligated Party 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 Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Obligated Party is subject to the enforcement and penalty provisions in Article 121.

10. Prohibition on Use of Public Funds for Political Activity. In performing services pursuant to this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party within the meaning of San Francisco Administrative Code Chapter 12M, the Obligated Party shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services pursuant to this Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of its services, the Obligated Party may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to the Obligated Party, or the Obligated Party collects such information on City's behalf, such information must be held by such Obligated Party in confidence and used only in performing the Agreement. The Obligated Party 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 Obligated Party agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. The Obligated Party is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

The requirements of Article 142 shall only apply to the Obligated Party'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. Article 142 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. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

14. Conflict of Interest. By executing this Agreement, the Obligated Party 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 City if it becomes aware of any such fact during the term of this Agreement.

15. Food Service Waste Reduction Requirements. The Obligated Party 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 remedies for noncompliance provided therein.

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

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

18. Prevailing Wages. Services to be performed by the Obligated Party under this Agreement may involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, or San Francisco Administrative Code Chapter 102 (collectively, "Covered Services"), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by the Obligated Party.

19. Assignment. The Services to be performed by the Obligated Party are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

20. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and each of the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**BORROWER LOAN AGREEMENT**

**among**

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

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

**and**

**160 FREELON HOUSING PARTNERS, L.P.,  
as Borrower**

**Relating to**

**\$ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1  
and**

**\$ \_\_\_\_\_  
City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-2 (Taxable)  
Dated as of June 1, 2025**

**All of the right, title and interest of the City and County of San Francisco (except for its Unassigned Rights) in and to this Borrower Loan Agreement are being assigned to U.S. Bank Trust Company, National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of June 1, 2025 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent under which the Funding Lender is originating a loan to the Governmental Lender to fund the Borrower Loan made under this Borrower Loan Agreement.**



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EXHIBIT A      MANDATORY CONTRACTING PROVISIONS

## BORROWER LOAN AGREEMENT

**THIS BORROWER LOAN AGREEMENT** (this “**Borrower Loan Agreement**”) is made and entered into as of June 1, 2025, by and among the **CITY AND COUNTY OF SAN FRANCISCO** (the “**Governmental Lender**”), a municipal corporation organized and existing under the laws of the State of California (the “**State**”), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, duly organized and existing under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and **160 FREELON HOUSING PARTNERS, L.P.**, a California limited partnership duly organized and existing under the laws of the State of California (together with its successors and assigns permitted hereunder, the “**Borrower**”).

### RECITALS

**A.** The Act (as defined in the Funding Loan Agreement hereinafter defined) authorizes the Governmental Lender (a) to make loans to any person to provide financing for residential rental developments located within the City and County of San Francisco (the “**City**”), and intended to be occupied in part or in whole by persons of low and moderate income; (b) to borrow funds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with any such borrowing by 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 repayment of any such borrowing by the Governmental Lender.

**B.** The Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the “**Funding Loan Agreement**”) by and among Bank of America, N.A., a national banking association, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Governmental Lender and the Fiscal Agent, pursuant to which the Initial Funding Lender will make a loan (the “**Funding Loan**”) to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower (the “**Borrower Loan**”) for the acquisition, construction, development and equipping of a multifamily affordable rental housing development located at 160 Freelon Street, in San Francisco, California, and known as 160 Freelon, and the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Notes, as defined herein.

**C.** The Funding Loan is evidenced by the Governmental Lender’s Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1, dated the Delivery Date, in the principal amount of \$\_\_\_\_\_ (together with all riders and addenda thereto, the “**Series D-1 Governmental Note**”) and the Governmental Lender’s Multifamily Housing Revenue Note (160 Freelon) Series 2025D-2 (Taxable), dated the Delivery Date, in the principal amount of \$\_\_\_\_\_ (together with all riders and addenda thereto, the “**Series D-2 Governmental Note**”, and together with the Series D-1 Governmental Note, the “**Governmental Notes**”) delivered by the Governmental Lender to the Initial Funding Lender.

**D.** The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which

proceeds of the Funding Loan will be used by the Governmental Lender to fund the Borrower Loan to the Borrower in corresponding installments pursuant to this Borrower Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents, as defined in the Funding Loan Agreement.

**E.** The Borrower has agreed to use the proceeds of the Borrower Loan to finance the construction of the Project.

**F.** The Borrower's repayment obligations in respect of the Borrower Loan will be evidenced by a Promissory Note dated the Delivery Date in the principal amount of \$\_\_\_\_\_ (together with all riders and modifications thereto, the "**Series D-1 Borrower Note**") and a Promissory Note dated the Delivery Date in the principal amount of \$\_\_\_\_\_ (together with all riders and modifications thereto, the "**Series D-2 Borrower Note**", and together with the Series D-1 Borrower Note, the "**Borrower Notes**") delivered to the Governmental Lender, which Borrower Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** To secure the Borrower's obligations under the Borrower Notes, the Borrower will execute and deliver to the Governmental Lender a Construction Leasehold Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**H.** Citibank, N.A. (the "**Permanent Funding Lender**"), the Borrower, and the Initial Funding Lender have entered into a Forward Purchase Agreement of even date herewith (the "**Permanent Commitment**") whereby the Permanent Funding Lender has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Permanent Commitment on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the portion of the Funding Loan represented by the Series D-1 Governmental Note (the "**Tax-Exempt Funding Loan**") from the Initial Funding Lender following the Conversion Date subject to the terms and conditions of the Permanent Commitment.

**I.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Permanent Commitment, the portion of the Borrower Loan represented by the Series D-1 Borrower Note (the "**Tax-Exempt Borrower Loan**") will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Permanent Funding Lender shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Series D-1 Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Borrower Loan will not convert from the Construction Phase to the Permanent Phase, and the Permanent Funding Lender will have no obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan as the holder of the Governmental Notes.

**J.** As a Condition to Conversion, certain Financing Documents are required to be amended and restated and the Borrower is required to enter into a Loan Covenant Agreement with the Permanent Funding Lender (the "**Permanent Continuing Covenant Agreement**"), in each case pursuant to the forms attached to the Permanent Commitment.

**K.** If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Permanent Funding Lender on the Conversion Date as set forth above, the Initial Funding Lender shall deliver the Funding Loan to the Permanent Funding Lender for purchase pursuant to the terms of the Permanent Commitment (such date of purchase being referred to as the “**Permanent Purchase Date**”).

**L.** Upon the occurrence of the Permanent Purchase Date, the Initial Funding Lender will assign to the Permanent Funding Lender all of its rights and interest in the Tax-Exempt Funding Loan, the Series D-1 Governmental Note, the Funding Loan Agreement, the Tax-Exempt Borrower Loan, the Tax-Exempt Borrower Note, the Borrower Loan Agreement, the Permanent Continuing Covenant Agreement and the other Financing Documents, and the portion of the Funding Loan represented by the Series D-2 Governmental Note (the “**Taxable Funding Loan**”) will be paid in full.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement shall have the same meanings for the purposes of this Borrower Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

“*Borrower Loan Agreement*” means this Borrower Loan Agreement, together with any amendments hereto.

“*Borrower Loan Payment*” means each payment of the Borrower Loan on each Borrower Loan Payment Date pursuant to the Borrower Notes and this Borrower Loan Agreement.

“*Borrower Loan Payment Date*” means (A) the first day of each calendar month, commencing [\_\_\_\_\_] 1, 2025, or (B) any other date on which the Borrower Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Borrower Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Borrower Loan Payment Date.

“*Borrower’s Governing Agreement*” means Borrower’s [First Amended and Restated Agreement of Limited Partnership], dated as of the Delivery Date, by and among [Related/160 Freelon Development Co., LLC, SFHDC 160 Freelon LLC, Banc of America CDC Special Holding Company, Inc., the Special Limited Partner, and Bank of America, N.A., the Investor Limited Partner], and [\_\_\_\_\_] (in its capacity as withdrawing limited partner)], as such agreement may be supplemented or amended.

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Fee Component*” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

“*General Partner*” means, collectively or individually as the context may require, Related/160 Freelon Development Co., LLC, a California limited liability company, as administrative general partner of the Borrower, and SFHDC 160 Freelon LLC, a California limited liability company, as managing general partner of the Borrower.

“*Governmental Lender’s Closing Fee*” shall mean \$[0.00].

“*Ground Lease*” shall mean that certain Ground Lease dated as of \_\_\_\_\_, 20\_\_\_\_, by and between the City and County of San Francisco, as lessor, and the Borrower, as lessee, with respect to the Land.

“*Investor Limited Partner*” means Bank of America, N.A., and its permitted successors and assigns.

“*Servicing Fee*” means any fee payable to the Servicer in connection with the servicing of the Borrower Loan and the Funding Loan in a written agreement between the Borrower and the Servicer.

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Borrower Loan Agreement are the Articles, sections and other subdivisions of this Borrower Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Borrower Loan Agreement; the term “heretofore” means before the date of execution of this Borrower Loan Agreement; and the term “hereafter” means after the date of execution of this Borrower Loan Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01 Representations of the Governmental Lender.** The Governmental Lender makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Governmental Lender is a municipal corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Notes and to make the Borrower Loan from the proceeds thereof, and to execute, and deliver this Borrower Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all necessary action on its part to make the Borrower Loan from the proceeds of the Funding Loan.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

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

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge without investigation, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents to which the Governmental Lender is a party, or the issuance, sale, execution or delivery of the Governmental Notes; (iii) affects or questions the validity or enforceability of the Governmental Notes or any Financing Document to which the Governmental Lender is a party; (iv) questions the tax-exempt status of the Series D-1 Governmental Note under the Code; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Notes or any Financing Document to which it is a party, or to carry out the



transactions contemplated by the Governmental Notes and the Financing Documents to which it is a party.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Borrower Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Borrower Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Borrower Loan Agreement, the Tax Certificate and the Tax Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Notes, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 Representations, Warranties and Covenants of the Borrower.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Borrower Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Borrower Loan Agreement:

(a) The Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Borrower Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Borrower Loan Agreement and the other Financing Documents. All corporate general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) acquire leasehold interests in land, including but not limited to, the leasehold interest in the Project Site pursuant to the Ground Lease, (iii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project, and (iv) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Borrower Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series D-1 Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, and all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, [lease payments,] and any governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) All of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests (other than pursuant to the terms of the Borrower's limited partnership agreement and related agreements in connection therewith). Nothing in this Borrower Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Borrower Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project (other than pursuant to the terms of the Borrower's limited partnership agreement and related agreements in connection therewith).

(p) The Project is located wholly within the boundaries of the City.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would adversely affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Series D-1 Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Borrower Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a leasehold interest in the Project Site and a fee ownership interest in the improvements on the Project Site, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Initial Funding Lender, the Permanent Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, the Initial Funding Lender, the Permanent Funding Lender, the Funding Lender Representative or the Servicer in any manner, and (v) neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

(u) All representations and warranties of the Borrower in any Financing Documents are incorporated herein by reference for the benefit of the Governmental Lender and the Fiscal Agent as if fully set forth herein.

**Section 2.03 Representations and Warranties of the Fiscal Agent.** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States of America. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Borrower Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Borrower Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Borrower Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Borrower Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Borrower Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Borrower Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Borrower Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Notes, (iii) the performance by the Fiscal Agent of its obligations under this Borrower Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Borrower Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 Arbitrage and Rebate Fund Calculations.** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with the obligations of the Borrower as set forth in Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 Tax Covenants of the Borrower.** The Borrower covenants and agrees that:

(a) it shall assure that the proceeds of the Series D-1 Governmental Note are used in a manner such that the Series D-1 Governmental Note will satisfy the requirements of section 142(d) of the Code relating to qualified residential rental projects;

(b) it shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series D-1 Governmental Note to be “federally guaranteed” within the meaning of section 149(b) of the Code;

(c) it shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series D-1 Governmental Note;

(d) it shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the Series D-1 Governmental Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series D-1 Governmental Note would have caused the Series D-1 Governmental Note to be “arbitrage bonds” within the meaning of section 148 of the Code;

(e) it shall take all actions necessary to assure the exclusion of interest on the Series D-1 Governmental Note from the gross income of the owners of the Series D-1 Governmental Note to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series D-1 Governmental Note;

(f) the California Debt Limit Allocation Committee shall have transferred a portion of the State of California’s private activity bond allocation (within the meaning of section 146 of the Code) equal to the principal amount of the Bonds;

(g) from the proceeds of the Series D-1 Governmental Note and investment earnings thereon, it will not use or permit to be used an amount in excess of two percent (2%) of the proceeds of the Series D-1 Governmental Note for costs of issuance of the Series D-1 Governmental Note, all within the meaning of section 147(g)(1) of the Code and that, for this purpose, if the fees of the Initial Funding Lender are retained as a discount on the purchase of the Series D-1 Governmental Note, such retention shall be deemed to be an expenditure of proceeds of the Series D-1 Governmental Note for said fees;

(h) not less than 95 percent of the net proceeds of the Series D-1 Governmental Note (within the meaning of section 150(a)(3) of the Code) will be paid for Qualified Project Costs;

(i) less than twenty-five percent (25%) of the proceeds of the Series D-1 Governmental Note shall be used, directly or indirectly, for the acquisition of land;

(j) no proceeds of the Series D-1 Governmental Note shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in section 145(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with proceeds of the Series D-1 Governmental Note; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds of the Series D-1 Governmental Note; and

(k) no proceeds of the Series D-1 Governmental Note shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Series D-1 Governmental Note shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### **ARTICLE III**

#### **THE BORROWER LOAN**

**Section 3.01 Conditions to Funding the Borrower Loan.** On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.02 and 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to fund advances of the Borrower Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Borrower Notes and the Governmental Lender shall have endorsed the Borrower Notes to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Governmental Lender shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, the Permanent Funding Lender and the Servicer;

(f) Delivery shall have been made to the Fiscal Agent or into escrow with the Title Company (or separate escrow company, if applicable) 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 Issuance Deposit (as defined in Section 3.03 herein),

all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender and the Governmental Lender (or such other counsel as may be acceptable to the Funding Lender) and/or as specified in a closing memorandum of the Funding Lender and approved by the Governmental Lender;

(g) Delivery shall have been made to the Title Company of Borrower Escrow Instructions in form acceptable to the Governmental Lender and the Funding Lender; and

(h) Payment shall have been made of all fees payable in connection with the closing of the Borrower Loan, including the Governmental Lender's Closing Fee and Governmental Lender Fee due on the Closing Date, and the initial fees and expenses of the Fiscal Agent and the Funding Lender.

### **Section 3.02 Terms of the Borrower Loan; Servicing.**

(a) The Borrower Loan shall (i) be evidenced by the Borrower Notes; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$\_\_\_\_\_ ; (iv) bear interest as provided in the Borrower Notes; (v) provide for principal and interest payments in accordance with the Borrower Notes; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Borrower Notes. The outstanding principal balance of the Borrower Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited by the Fiscal Agent into the Borrower Loan Fund under the Funding Loan Agreement minus any amounts prepaid in accordance with the terms hereof and the Borrower Notes.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is Bank of America, N.A., which shall service the Loans as required by the Initial Funding Lender. On the Permanent Purchase Date, the Permanent Funding Lender shall become the Servicer and shall service the Loans. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Borrower Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Borrower Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).



(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Borrower Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Borrower Loan or appoint or attempt to appoint a substitute servicer for the Borrower Loan.

### **Section 3.03 Deposits.**

On the Delivery Date, pursuant to section 2.11 of the Funding Loan Agreement, the Initial Installment shall be deposited in the Project Account of the Borrower Loan Fund. Thereafter, on each date of an advance of the proceeds of the Funding Loan, such proceeds shall be deposited in the Project Account of the Borrower Loan Fund. On the Delivery Date, the Borrower will cause to be transferred to the Fiscal Agent from the closing escrow, from Borrower funds, for credit to the Cost of Issuance Fund, the Cost of Issuance Deposit.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Pledge and Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Borrower Loan Agreement (excluding the Unassigned Rights), the Borrower Loan, the Borrower Notes, the Security Instrument, the other Borrower Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Notes and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 Damage; Destruction and Eminent Domain.** If, prior to payment in full of the Borrower Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Borrower Loan Documents and the Funding Loan Agreement.

**Section 3.07 Enforcement of Financing Documents.** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

## ARTICLE IV

### LOAN PAYMENTS

#### **Section 4.01 Payments Under the Borrower Notes; Independent Obligation of Borrower.**

(a) **Payment Obligations.** The Borrower agrees to repay the Borrower Loan on each Borrower Loan Payment Date as provided in the Borrower Notes, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Borrower Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Borrower Notes, provided that in all events payments made by the Borrower under and pursuant to the Borrower Notes shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Borrower Notes or any provision of the Borrower Notes shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Borrower Notes or such provision of the Borrower Notes shall be deemed to be the obligation of the Borrower pursuant to this Borrower Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Borrower Notes.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Borrower Loan, to perform all of its obligations under the Borrower Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Borrower Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Borrower Loan Agreement or by the Borrower Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand (except as otherwise set forth herein or under any of the Borrower Loan Documents), and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Borrower Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Borrower Notes shall be made in immediately available funds to the Servicer on each Borrower Loan Payment Date or such other date when such payment is due; provided, however, such Borrower Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Borrower Loan Payment or any other payment under this Borrower Loan Agreement or under the Borrower Notes shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 Additional Payments Under the Borrower Notes and this Borrower Loan Agreement.**

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Borrower Notes include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Borrower Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Borrower Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Borrower Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Initial Funding Lender, its origination fees, together with all third party and out-of-pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Permanent Funding Lender, all third party and out-of-pocket expenses of the Permanent Funding Lender (including but not limited to the fees and expenses of counsel to the Permanent Funding Lender) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, the Governmental Lender's Closing Fee, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses

of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the execution and delivery of the Governmental Notes.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$[1,000], together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the execution and delivery of the Governmental Notes.

(v) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vi) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time including all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under or in connection with the Borrower Loan Documents or the Financing Documents, any costs of responding to or defending audits, investigations or other governmental proceedings, and any taxes and assessments levied on the Governmental Lender with respect to the Project, as and when the same become due.

(vii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Borrower Loan Agreement when due from time to time.

(viii) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(x) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Borrower Loan Documents.

(xi) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.05 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 Payments to Rebate Fund.** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 Prepayment.**

(a) **Optional Prepayment of the Borrower Loan.** The Borrower shall have the option to prepay the Borrower Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Borrower Notes.

(b) **Mandatory Prepayment of the Borrower Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Borrower Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Borrower Notes, as provided in the Borrower Notes. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Tax-Exempt Borrower Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Series D-1 Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; and

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Permanent Lender prior to the Forward Commitment Maturity Date.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Borrower Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Borrower Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Borrower Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 Borrower’s Obligations Upon Prepayment.** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

#### **Section 4.06 Limits on Personal Liability.**

(a) Except as otherwise set forth in the Borrower Notes and subsection 4.06(b) below, the obligations of the Borrower under this Borrower Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower.

However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Borrower Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Borrower Notes, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Borrower Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partners: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(iii), (b)(v), (b)(vi), and (b)(vii) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Borrower Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Tax-Exempt Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Borrower Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## **ARTICLE V**

### **SPECIAL COVENANTS OF BORROWER**

**Section 5.01 Performance of Obligations.** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 Compliance With Applicable Laws.** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 Funding Loan Agreement Provisions.** The execution of this Borrower Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 Reserved.**

**Section 5.05 Borrower to Maintain Its Existence; Certification of No Default.**

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 Borrower to Remain Qualified in State and Appoint Agent.** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 Sale or Other Transfer of Project.** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative to the extent required by the Continuing Covenant Agreement.

**Section 5.08 Right to Perform Borrower's Obligations.** In the event the Borrower fails to perform any of its obligations under this Borrower Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice and subject to any applicable cure period, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand, then payable with interest thereon at the default rate of interest payable under the Borrower Loan Documents.

**Section 5.09 Notice of Certain Events.** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 Survival of Covenants.** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Borrower Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 Access to Project; Records.** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the

Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Borrower Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Borrower Loan Agreement and in the Borrower Notes to the extent the Borrower Loan is not prepaid in full in accordance with the terms of the Borrower Loan Documents.

**Section 5.14 Obligation of the Borrower To Construct the Project.** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Borrower Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the construction, development and equipping thereof, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Borrower Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Borrower Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.



**Section 5.15 Filing of Financing Statements.** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Borrower Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 Indemnification.

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) The Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Borrower Loan, the Funding Loan, the Borrower Notes or the Governmental Notes, including any secondary market transaction;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Borrower Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower's applying for the Project loan or contained in any of the Financing Documents to which the Borrower is a party or any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Notes necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Series D-1 Governmental Note or allegations (or regulatory inquiry) that interest on the Series D-1 Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Series D-1 Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Notes to which it is a party, including all amounts owed under Section 7.06 of the Funding Loan Agreement;

(xii) Any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, General Partner, Guarantor or their Affiliates to Governmental Lender, the Fiscal Agent, the Funding Lender, Servicer or any other Person in connection with Borrower's application for the Borrower Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement, if applicable);

(xiii) Any failure (or alleged failure) by Borrower to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(xiv) The Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; or

(xv) The use of the proceeds of the Borrower Loan and the Funding Loan.

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, or the Funding Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party; or (C) in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel. In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Fiscal Agent and/or the Governmental Lender in enforcing the provisions hereof, as more fully set forth in this Borrower Loan Agreement.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to this Borrower Loan Agreement shall survive the final payment or defeasance of the Governmental Notes and, in the case of the Fiscal Agent, any resignation or removal. The provisions of this Section 6.01 shall survive the termination of this Borrower Loan Agreement. Nothing contained in this Section 6.01 shall in any way be construed to limit the indemnification rights of the Governmental Lender contained in Section 7 of the Tax Regulatory Agreement. With respect to the Governmental Lender, the Tax Regulatory Agreement shall control in any conflicts between this Section 6.01 and Section 7 of the Tax Regulatory Agreement.

**Section 6.02 Limitation With Respect to the Funding Lender.** Notwithstanding anything in this Borrower Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or

comparable conversion of the Borrower Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Borrower Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01 Events of Default.** The following shall be “Events of Default” under this Borrower Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Borrower Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Borrower Loan Agreement, the Borrower Notes, the Financing Documents or the Security Instrument at the times and in the amounts required by this Borrower Loan Agreement, the Borrower Notes, the Financing Documents, and the Security Instrument, as applicable, subject to any applicable cure periods expressly granted to Borrower hereunder;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable notice and cure period) set forth in this Borrower Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (with the Governmental Lender, the Fiscal Agent or the Funding Lender Representative providing a courtesy copy of any notice given to the Borrower to the Investor Limited Partner), (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Borrower Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower and/or the Investor Limited Partner shall have commenced to cure the default or Event of Default within 30 days after the Borrower's receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Borrower Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement, the Financing Documents or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Borrower Loan Agreement but only if the Fiscal Agent is provided written notice by the

Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

The Investor Limited Partner shall be entitled to cure on behalf of the Borrower any Event of Default with respect to which a cure by the Borrower is expressly permitted, but only to the extent and subject to the same terms and conditions applicable to the Borrower. Any cure of an Event of Default tendered by the Investor Limited Partner shall be treated as a cure tendered by Borrower and shall be accepted or rejected on the same terms as if the cure had been directly tendered by Borrower.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Notes to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Borrower Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Borrower Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any Prepayment Premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the

Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Borrower Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Borrower Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Borrower Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the written direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Borrower Loan Agreement.

**Section 7.04 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Borrower shall default under any of the provisions of this Borrower Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Borrower Loan Agreement or in the Borrower Notes, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Borrower Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 Control of Proceedings.**

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Borrower Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Borrower Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Borrower Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof and the Tax Certificate or seek injunctive relief against acts which may be in violation thereof; and

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Code and state and local law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement except against Excess Revenues (defined below), if any, of the Borrower, unless (A) Funding Lender Representative otherwise specifically consents in writing to the use of other funds or (B) the monetary damages are for unpaid amounts owed pursuant to Section 4.02, 4.03, 6.01 or 7.04 hereof).

(d) In addition, notwithstanding Section 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought except against Excess Revenues, if any, of the Borrower, unless (i) Funding Lender Representative otherwise specifically consents in writing to the use of other funds or (ii) the monetary damages are for unpaid amounts owed pursuant to Section 4.02, 4.03, 6.01 or 7.04 hereof), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or the Indemnified Parties related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party. Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

(e) As used in this Section 7.06, the term “Excess Revenues” means, for any period, the net cash flow of the Borrower available for distribution or payment to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expenses, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise) with respect to the Project, the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan under any Financing Document or any other indebtedness of the Borrower, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective 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 this Borrower Loan Agreement, the Borrower Notes, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. 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.

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### **Section 8.01 Notices.**

(a) Whenever in this Borrower Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) if by hand on the date of such delivery and otherwise on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (in each case, receipt of which to be evidenced by a signed receipt from such hand or overnight delivery service or by the recipient party) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Borrower Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice



or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

The Fiscal Agent is authorized and agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Borrower Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02 Concerning Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Borrower Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Borrower Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 Governing Law.** This Borrower Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State without regard to conflicts of laws principles.

**Section 8.04 Entire Agreement, Modifications in Writing.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. Modification or the waiver of any provisions of this Borrower Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 Further Assurances and Corrective Instruments.** The Governmental Lender (at the expense of the Borrower), the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Borrower Loan Agreement; provided, however, that no such supplement or further instruction shall change the essential economic terms of the Borrower Loan or impose on the Borrower greater liability in connection with the Borrower Loan Documents without the written consent of the Borrower.

**Section 8.06 Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Borrower Loan Agreement.

**Section 8.07 Severability.** The invalidity or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Borrower Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Borrower Loan and all other amounts owing under the Borrower Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 Effective Date and Term.** This Borrower Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 Cross References.** Any reference in this Borrower Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Borrower Loan Agreement, an article of this Borrower Loan Agreement, a section of this Borrower Loan Agreement, a subsection of the section of this Borrower Loan Agreement in which the reference appears and a paragraph of the subsection within this Borrower Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Borrower Loan Agreement are incorporated by reference into this Borrower Loan Agreement.

**Section 8.12 No Third-Party Beneficiaries.** The Financing Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Funding Lender Representative, the Servicer, the Fiscal Agent and the Borrower, and nothing contained in any Financing Document shall be deemed to confer upon anyone other than the foregoing parties any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 8.13 Additional Loans.** The Governmental Lender and the Fiscal Agent each acknowledges that the Initial Funding Lender or the Permanent Funding Lender may make additional loans to the Borrower secured by additional mortgages on the Project (“Additional Loans”), provided however that no such Additional Loans may be made without the prior written consent of the Governmental Lender. Additional Loans must be subordinate to the repayment of the Borrower Loan by the Borrower.

**Section 8.14 Non-Liability of Governmental Lender.** Notwithstanding anything to the contrary herein or in any other instrument to the contrary, the Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any 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 Borrower Loan Agreement, the Funding Loan, the Governmental Notes or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 No Liability of Officers.** Notwithstanding anything to the contrary herein or in any other instrument to the contrary, no recourse under or upon any obligation, covenant, or agreement or in the Governmental Notes, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Borrower Loan Agreement and the issuance of the Governmental Notes.

**Section 8.16 Capacity of the Fiscal Agent.** The Fiscal Agent is entering into this Borrower Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, and limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 Reliance.** The representations, covenants, agreements and warranties set forth in this Borrower Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Borrower Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent

may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Borrower Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Borrower Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Borrower Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Borrower Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of the Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Borrower Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

**Section 8.18 Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Financing Documents and that the Financing Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 8.19 Assignment.** The Borrower Loan Agreement, the Security Instrument, the Borrower Notes and the Borrower Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, provided that neither the Funding Lender nor the Fiscal Agent may assign or transfer its interest in the Borrower Loan Documents separately from its interest in the Funding Loan Agreement and the Governmental Notes, any assignment or transfer of which must be in conformity with the requirements of Section 2.08 of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that the Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, any Affiliate of either of them, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or

under any of the Borrower Loan Documents or Financing Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

**Section 8.20 Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Financing Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Financing Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. None of the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer undertake or assume any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Financing Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Financing Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any of the Borrower's obligations under or with respect to the Borrower Loan Agreement or the Borrower Notes, or expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, or its stockholders, members, or partners, as applicable. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower, or to create any equity interest in the Project on behalf of the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 8.21 Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Financing Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 8.22 Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 8.23 Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 8.24 City Contracting Provisions.** The Borrower covenants and agrees to comply with the provisions set forth in Exhibit B hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Borrower Loan Agreement,  
all as of the date first set forth above.

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

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO 160 FREELON  
BORROWER LOAN AGREEMENT]

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

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

[FISCAL AGENT'S SIGNATURE PAGE TO 160 FREELON  
BORROWER LOAN AGREEMENT]



160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg, President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel, Chief Executive Officer

[BORROWER'S SIGNATURE PAGE TO 160 FREELON  
BORROWER LOAN AGREEMENT]

## EXHIBIT A

### MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Borrower Loan Agreement (this “Agreement”) as if set forth in the text hereof. Capitalized terms used but not defined in this Exhibit A shall have the meanings given in this Agreement. As used herein, the Funding Lender and Fiscal Agent shall together be known as the “Obligated Party.”

1. Nondiscrimination Requirements.

(a) *Nondiscrimination in Contracts.* The Obligated Party shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. The Obligated Party 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 Labor and Employment Code Article 131.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party to remove from, City facilities personnel of such Obligated Party 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 Laws Requiring Access for People with Disabilities. The Obligated Party acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. The Obligated Party shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. The Obligated Party agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Obligated Party, its employees, agents or assigns will constitute a material breach of this Agreement.

6. Sunshine Ordinance. The Obligated Party acknowledges that this Agreement and all records related to its formation, the Obligated Party's performance of services pursuant to this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 7920 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 Obligated Party 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 Obligated Party's board of directors; the Obligated Party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in such Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Obligated Party. The Obligated Party 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. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Obligated Party is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. The Obligated Party is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of

obligations in this Section. By signing and executing this Agreement, the Obligated Party certifies that it complies with Article 111.

9. Requiring Health Benefits for Covered Employees. Labor and Employment Code Article 121 applies to this contract. The Obligated Party shall comply with the requirements of Article 121. For each Covered Employee, the Obligated Party shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If the Obligated Party 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 Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Obligated Party is subject to the enforcement and penalty provisions in Article 121.

10. Prohibition on Use of Public Funds for Political Activity. In performing services pursuant to this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party within the meaning of San Francisco Administrative Code Chapter 12M, Obligated Party shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services pursuant to this Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of its services, the Obligated Party may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to the Obligated Party, or the Obligated Party collects such information on City's behalf, such information must be held by such Obligated Party in confidence and used only in performing the Agreement. The Obligated Party 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 Obligated Party agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Obligated Party is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

The requirements of Article 142 shall only apply to the Obligated Party'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. Article 142 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. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

14. Conflict of Interest. By executing this Agreement, the Obligated Party 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 City if it becomes aware of any such fact during the term of this Agreement.

15. Food Service Waste Reduction Requirements. The Obligated Party 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 remedies for noncompliance provided therein.

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

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

18. Prevailing Wages. Services to be performed by the Obligated Party under this Agreement may involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, or San Francisco Administrative Code Chapter 102 (collectively, "Covered Services"), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by the Obligated Party.

19. Assignment. The Services to be performed by the Obligated Party are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

20. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and each of the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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**EXHIBIT D(1) TO FORWARD PURCHASE AGREEMENT**

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**AMENDED AND RESTATED  
FUNDING LOAN AGREEMENT**

among

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

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

and

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

Relating to

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

Dated as of \_\_\_\_\_ 1, 20\_\_

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## FUNDING LOAN AGREEMENT

**THIS FUNDING LOAN AGREEMENT**, dated as of \_\_\_\_\_ 1, 20\_\_ (this “Funding Loan Agreement”), is made and entered into by **CITIBANK, N.A.** (together with any successor hereunder, the “Funding Lender”), the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, as fiscal agent (the “Fiscal Agent”).

### WITNESSETH:

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

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

WHEREAS, 160 Freelon Housing Partners, L.P., a California limited partnership (the “Borrower”), previously requested that the Governmental Lender enter into a Funding Loan Agreement dated as of June 1, 2025 (the “Construction Funding Loan Agreement”), among Bank of America, N.A., a national banking association (the “Initial Funding Lender”), the Governmental Lender and the Fiscal Agent, under which the Initial Funding Lender (a) advanced funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (b) applied the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition, construction, rehabilitation and development of a multifamily rental housing development located in the City known as “160 Freelon” (the “Project”); and

WHEREAS, simultaneously with the delivery of the Construction Funding Loan Agreement, the Governmental Lender and the Borrower entered into a Borrower Loan Agreement dated as of June 1, 2025 (the “Construction Borrower Loan Agreement”), whereby the Borrower agreed to make loan payments to the Governmental Lender in an amount which, when added to other funds available under the Construction Funding Loan Agreement, would 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 Construction Borrower Loan Agreement, the Borrower executed and delivered to the Governmental Lender its Promissory Note (Tax-Exempt Loan) dated [Closing Date, 2025] (the “Tax-Exempt Construction Borrower Note”) and

its Promissory Note (Taxable) dated [Closing Date, 2025] (the “Taxable Construction Borrower Note” and together with the Tax-Exempt Construction Borrower Note, the “Construction Borrower Notes”), and the obligations of the Borrower under the Construction Borrower Notes were secured by a lien on and security interest in the Project pursuant to a Construction Leasehold Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing, dated as of [Closing Date, 2025] (as may be supplemented or amended, the “Construction Security Instrument”), made by the Borrower in favor of the Governmental Lender, as assigned to the Fiscal Agent for the benefit of the Initial Funding Lender to secure, among other things, the performance by the Governmental Lender of its obligations under the Construction Funding Loan Agreement; and

WHEREAS, the Governmental Lender executed and delivered to the Initial Funding Lender its (a) Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, in the original maximum principal amount of \$\_\_\_\_\_ (the “Tax-Exempt Governmental Lender Note”) and (b) Multifamily Housing Revenue Note (160 Freelon), Taxable Series 2025D-2, in the original maximum principal amount of \$\_\_\_\_\_ (the “Taxable Governmental Lender Note”), each dated the Closing Date, collectively evidencing its limited obligation to make the payments due to the Initial Funding Lender under the Funding Loan as provided in the Construction Funding Loan Agreement; and

WHEREAS, as security for the Funding Loan, the Governmental Lender assigned all of its interests, except for the Unassigned Rights, in the Borrower Loan and the Construction Borrower Notes to the Fiscal Agent for the benefit of the Initial Funding Lender, for security purposes only; and

WHEREAS, the Borrower, Initial Funding Lender and the Funding Lender, entered into that Forward Purchase Agreement dated as of June 1, 2025 (as may be amended, the “Forward Purchase Agreement”), pursuant to which the Funding Lender agreed to acquire up to \$\_\_\_\_\_ principal amount of the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note upon satisfaction of the terms and conditions set forth therein; and

WHEREAS, as a condition of the Funding Lender’s purchase of the Initial Funding Lender’s remaining interests in the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note, the Funding Lender requires that the Governmental Lender, Fiscal Agent and Borrower enter into certain agreements, including this Funding Loan Agreement, to amend and restate the Construction Funding Loan Agreement, the Construction Borrower Loan Agreement, the Construction Security Instrument, and the Tax-Exempt Construction Borrower Note; and

WHEREAS, all of the Conditions to Closing (as defined in the Forward Purchase Agreement), including the prepayment in full of the Taxable Construction Borrower Note by the Borrower and resulting prepayment in full of the Taxable Governmental Lender Note and the prepayment in part of the Tax-Exempt Construction Borrower Note by the Borrower and resulting prepayment in part of the Tax-Exempt Governmental Lender Note, and all of the other conditions of Funding Lender’s purchase of the Funding Loan set forth in the Forward Purchase Agreement have been or as of the Conversion Date will be satisfied; and

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a “conduit issuer” and the Funding Loan and the Governmental

Lender Note will continue to be limited obligations of the Governmental Lender as described in Article V hereof; 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, subject to the terms hereof, has 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:

(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.

(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 owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

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

“*Acr*” shall have the meaning assigned to such term in the recitals above.

“*Additional Borrower Payments*” shall have the meaning given to 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*” shall mean (a) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof 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 or any state or local government or any agency or entity which is a political subdivision of a federal, state or local government (a “Governmental Entity”), in each case the beneficial interests in which will be (i) owned only by QIBs or (ii) rated in the “BBB” category or higher without regard to modifier (or the equivalent investment grade category) by at least one nationally recognized rating agency, or (d) a Governmental Entity.

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

“*Borrower*” shall mean 160 Freelon Housing Partners, L.P., a California limited partnership.

“*Borrower Loan*” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Construction Borrower Loan Agreement in the original aggregate principal amount of \$\_\_\_\_\_, outstanding on the Conversion Date in the aggregate principal amount of \$[\_\_\_\_\_], as evidenced by the Borrower Note.

“*Borrower Loan Agreement*” shall mean the Amended and Restated Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

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

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

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

“*Business Day*” shall mean any day other than (a) a Saturday or a Sunday, (b) a day on which federally insured depository institutions in the State or in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed or (c) a State holiday when the Governmental Lender is authorized or obligated to be closed.

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

“*Closing Date*” shall mean [Closing Date, 2025], the day on which the Funding Loan was originated by the Initial Funding Lender.

“*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.

“*Control*” shall mean, with respect to any Person, either (a) ownership directly or through other entities of more than 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*” shall mean [\_\_\_\_, 20\_\_], the date upon which the Funding Lender purchases the Tax-Exempt Governmental Lender Note from the Initial Funding Lender and assumes the role of the Funding Lender under the Funding Loan Documents.

“*Covenant Agreement*” means that certain Loan Covenant Agreement of even date herewith, between the Funding Lender and Borrower, setting forth certain provisions relating to the Borrower Loan, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“*Construction Funding Loan Agreement*” shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

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

“*Equity Investor*” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“*Expense Fund*” means the Expense Fund established by the Fiscal Agent pursuant to Section 7.5 hereof.

“*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’s Fees*” shall mean the ongoing annual compensation and expenses of the Fiscal Agent in the amount of \$[3,000] per annum, payable annually in arrears on each June 1, commencing [June 1, 2026]. The Fiscal Agent reserves the right to increase its annual fee from time to time.

“*Fitch*” shall mean Fitch, Inc., its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any

reason, the term “Fitch” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“*Forward Purchase Agreement*” shall mean the Forward Purchase Agreement described in the recitals of this Funding Loan Agreement.

“*Funding Lender*” shall mean Citibank, N.A., a national banking association, and any successor under this Funding Loan Agreement and the other Funding Loan Documents.

“*Funding Loan*” shall have the meaning assigned to such term in the recitals above.

“*Funding Loan Agreement*” shall mean this Amended and Restated Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent as it may from time to time be supplemented, modified or amended by one or more instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

“*Funding Loan Documents*” shall mean (a) this Funding Loan Agreement, (b) the Borrower Loan Agreement, (c) the Governmental Lender Note, (d) the Regulatory Agreement, (e) the Tax Certificate, (f) the Borrower Loan Documents, (g) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (h) all amendments, modifications, renewals and substitutions of any of the foregoing.

“*GAAP*” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“*Governmental Lender*” shall mean the City and County of San Francisco, a municipal corporation, organized and existing under the laws of the State.

“*Governmental Lender Note*” shall mean that certain City and County of San Francisco, California, Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1 dated [the Closing Date] in the outstanding principal amount of \$[\_\_\_\_\_] on the Conversion Date made by the Governmental Lender and payable to the Funding Lender, as it may be amended or replaced from time to time.

“*Highest Rating Category*” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating category given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for three months or less and “Aaa” for greater than three months. If at any time (a) both S&P and Moody’s rate a Permitted Investment and (b) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a

Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“*Initial Funding Lender*” shall mean Bank of America, N.A., a national banking association, and any successor, including the Funding Lender, under this Funding Loan Agreement and the other Funding Loan Documents.

“*Maturity Date*” shall mean [July 1, 2059].

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

“*Minimum Beneficial Ownership Amount*” shall mean \$250,000.

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

“*Note Payment Fund*” means the Note Payment Fund established by the Fiscal Agent pursuant to Section 7.4 hereof.

“*Ongoing Governmental Lender Fee*” shall mean ongoing fee of the Governmental Lender in the amount set forth in 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.

“*Permanent Period Amount*” shall mean \$[\_\_\_\_\_], the principal amount of the Funding Loan under this Funding Loan Agreement as of the Conversion Date.

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

(i) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).

(j) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(k) Demand deposits or time deposits with, or certificates of deposit 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 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s/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.

(l) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(m) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Fiscal Agent or its affiliates.

(n) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the “A” category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the “Collateral Agent”), and the Collateral Agent cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities). Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and the Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(o) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(i) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (i) shall not apply to Permitted Investments listed in paragraph (g) above.

(ii) Any obligation bearing interest at an inverse floating rate.

(iii) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(iv) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that 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 Note, consisting of the following: (a) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by or owing to the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (b) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

“*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 Note (including any Prepayment Premium as set forth in the Borrower Note) and (b) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

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

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

“*Rebate Fund*” shall mean the Rebate Fund established by the Fiscal Agent pursuant to Section 7.8 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 June 1, 2025, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

“*Required Transferee Representations*” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

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

“*Responsible Officer*” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions

similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

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

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

“*Security Instrument*” shall have the meaning given to such term in the Borrower Loan Agreement.

“*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.

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

“*S&P*” shall mean S&P Global Ratings, a Standard & Poor’s Financial Services LLC business division, its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “*S&P*” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“*State*” shall mean the State of California.

“*Tax Certificate*” shall mean, collectively, (a) the Tax Certificate dated the Closing Date, executed and delivered by the Governmental Lender, (b) the Borrower’s Use of Proceeds Certificate dated the Closing Date, and (iii) the Post-Issuance Compliance Certificate executed by the Governmental Lender and the Borrower on the Closing Date, in each case, including all exhibits and other attachments thereto and, in each case, as may be amended, modified, supplemented and replaced from time to time.

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

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

“*Tax Counsel No Adverse Effect Opinion*” shall mean an opinion of Tax Counsel substantially 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 Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

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

“*Unassigned Rights*” shall mean the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.17 thereof, its rights to be held harmless and indemnified under Section 5.15 thereof, its rights to attorneys’ fees under Sections 5.11, 5.13, 5.14 and 5.15 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement, and the Governmental Lender’s indemnification and enforcement rights, including but not limited to, rights to reimbursement and payment of fees, costs and expenses under the Regulatory Agreement.

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

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

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

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

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

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

**Section 1.6. Restatement of Construction Funding Loan Agreement.** The parties hereto do hereby amend and restate the Construction Funding Loan Agreement. From and after the effective date hereof, this Funding Loan Agreement shall amend, restate and replace in its entirety the Construction Funding Loan Agreement.

## ARTICLE II

### TERMS; GOVERNMENTAL LENDER NOTE

#### Section 2.1. Terms.

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

(b) **[Reserved].**

(c) **[Reserved].**

(d) **Origination Date; Maturity.** The Funding Loan was originated by Bank of America, N.A. on the Closing Date, acquired by the Funding Lender on the Conversion Date, and shall mature on the Maturity Date, at which time the entire principal amount of the Funding Loan, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(e) **Principal.** The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the Permanent Period Amount, less any payments of principal of the Governmental Lender Note previously received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (e) and in paragraphs (f) and (g) of this Section 2.1.

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

(f) **Interest.** Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement; provided, however, that in no event shall interest paid on the Governmental Lender Note exceed the Maximum Rate.

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

(h) **Usury.** The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the

Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

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

**Section 2.2. Form of Governmental Lender Note.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

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

**Section 2.4. Authentication.** The Governmental Lender Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Lender Note shall have been duly executed by the Fiscal Agent and such executed certificate of authentication upon the Governmental Lender Note shall be conclusive evidence that the Governmental Lender Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.5. Required Transferee Representations; Participations; Sale and Assignment.**

(a) In connection with its acquisition of the Governmental Lender Note, the Funding Lender shall deliver to the Governmental Lender the signed Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Conversion Date.

(b) The Funding Lender may not sell or assign the Governmental Lender Note and the Funding Loan except in whole to an Approved 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 or other beneficial ownership interests in the Governmental Lender Note and the Funding Loan in amounts that are no less than the Minimum Beneficial Ownership Amount, and provided further that the Governmental Lender Note and the Funding Loan or such participation interests therein shall be sold only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, the Required Transferee Representations; provided, however, that no Required Transferee Representations shall be required to be delivered by transferees or beneficial interest holders described in clauses (c) or (d) of the definition of “Approved Transferee,” and provided further, that beneficial ownership interests in the Governmental Lender Note and Funding Loan described in clause (c) of the definition of “Approved Transferee” may be sold in any amount equal to or greater than \$100,000 without regard to the Minimum Beneficial Ownership Amount, and provided further, that any transfers to transferees described in clauses (c) or (d) of the definition of “Approved Transferee” shall be conditioned upon (i) the prior written approval of the Governmental Lender or (ii) (A) the receipt by Governmental Lender of a written request from the Funding Lender to approve such a transfer, which request shall expressly state (1) the name and a brief description of the proposed transferee(s), (2) the expected credit ratings on any interests or participations in, or other securities of, the proposed transferee, (3) a description of the restrictions on the purchase of interests or participations in, or other securities of, the proposed transferee, (4) the deadline to respond, which shall be not less than thirty (30) days from receipt of such request, and (5) an express cross reference to this Section 2.5(b), and (B) the Governmental Lender shall have failed to send to the Funding Lender by the aforesaid deadline notice in accordance with Section 12.1 that such request has been rejected or that additional information or time is needed to consider such request and the length of time so needed.

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

(d) The Governmental Lender Note shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Fiscal Agent for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(e) The parties agree that a rating will not be sought for the Governmental Lender Note or the Funding Loan from any rating agency.

### ARTICLE III

#### PREPAYMENT

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

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

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the related Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, 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 Note shall be subject to mandatory prepayment in whole or in part upon payment or prepayment of the Borrower Note, at the direction of the Funding Lender in accordance with the terms of the Borrower Note, at a prepayment price equal to the outstanding principal balance of the Borrower Note paid or prepaid, plus accrued interest plus any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

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

## ARTICLE IV

### SECURITY

**Section 4.1. Security for the Funding Loan.** To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the terms and provisions of this Funding Loan Agreement and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender confirms its earlier assignment of similar rights to the Initial Funding Lender and, to the extent any of such rights have been reassigned to the Governmental Lender, by these presents does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Fiscal Agent and to the Funding Lender, as their interests may appear (except as limited herein), for the benefit of the holder from time to time of the Governmental Lender Note, a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived thereunder by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments (except those related to the Unassigned Rights) derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or



diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

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

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by the Fiscal Agent under this Funding Loan Agreement (other than any amounts held in the Expense Fund and 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; and the Fiscal Agent or the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the 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. The Funding Lender shall have, in connection with the security interest granted hereunder, all rights and remedies available to a secured party under the Uniform Commercial Code as enacted in the State.

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

(a) The Borrower Note;

(b) The originally executed Borrower Loan Agreement;

(c) A copy of the Security Instrument and all other Borrower Loan Documents to be executed as of the Conversion Date;

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

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

The Governmental Lender shall deliver and deposit with the Fiscal Agent or the Funding Lender, at the expense of the Borrower, such additional documents, financing statements, and instruments as the Fiscal Agent, at the direction of the Funding Lender or the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Fiscal Agent of its lien and security interest in and to the Security.

## **ARTICLE V**

### **LIMITED LIABILITY**

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

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

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

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

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

**Section 5.2. Exemption From Individual Liability.** No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any past, present or future mayor, supervisor, commissioner, officer, director, employee or agent of the Governmental Lender in his individual capacity, and neither the mayor, supervisors, commissioners, the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Note or this Funding Loan Agreement shall be liable personally on the Governmental Lender Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Note or the execution of this Funding Loan Agreement.

## ARTICLE VI

### CLOSING CONDITIONS; APPLICATION OF FUNDS

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

(a) Receipt by the Funding Lender of the original executed replacement Governmental Lender Note, authenticated by the Fiscal Agent;

(b) Receipt by the Fiscal Agent of the original executed Borrower Note;

(c) Receipt by the Fiscal Agent of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement and the Security Instrument;

(d) Receipt by the Fiscal Agent and the Governmental Lender of an executed Required Transferee Representations from the Funding Lender;

(e) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the purchase of the Governmental Lender Note by the Funding Lender;

(f) Receipt by the Funding Lender and the Governmental Lender of a Tax Counsel No Adverse Effect Opinion; and

(g) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender, the Governmental Lender or Tax Counsel may reasonably require in connection with the Funding Lender's purchase of the Governmental Lender Note pursuant to the Forward Purchase Agreement.

## ARTICLE VII

### FUNDS AND ACCOUNTS

**Section 7.1. Authorization To Create Funds and Accounts.** Except as provided in Section 7.3 hereof, no other funds or accounts have been or shall be established in connection with the Funding Loan. The Funding Lender, the Fiscal Agent (as directed by the Funding Lender), and the Servicer, if any, and any designee of the Funding Lender or the Servicer, 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 and/or the Borrower Loan Documents.

**Section 7.2. Investment of Funds.** Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested by the Funding Lender, the Servicer or the designee of the Funding Lender or the Servicer, as applicable, in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Certificate. Amounts held in any funds or accounts created under this Funding Loan Agreement and held by the Fiscal Agent shall be invested in Permitted Investments at the written direction of the Borrower, which shall provide such directions in all cases subject to the restrictions of Section 8.7 hereof and of the Tax Certificate. In the absence of such directions, the Fiscal Agent shall hold funds uninvested.

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. Interest earnings from any investments made in any funds or accounts hereunder shall be deposited in the respective fund or account.

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, 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.

**Section 7.3. Establishment of Funds.** The following funds and accounts were established with the Fiscal Agent at the time of the origination of the Funding Loan and will remain open from and after the Conversion Date:

- (a) The Note Payment Fund;
- (b) [Reserved];
- (c) The Expense Fund;
- (d) [Reserved]; and
- (e) The Rebate Fund.

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

All money to be deposited with or paid to the Fiscal Agent shall be wired to the Fiscal Agent pursuant to the wiring instructions contained in Exhibit F attached hereto. The Fiscal Agent shall provide Written Notice of any change to such wiring instructions to the Funding Lender and the Borrower no less than five Business Days prior to the next payment date for which such revised instructions will be applicable.

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

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

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

FIRST, to pay or provide for the payment of the interest then due on the Funding Loan to the registered owner of the Governmental Lender Note;

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

THIRD, to pay or provide for the payment of the Funding Loan on the Maturity Dates to the registered owner of the Governmental Lender Note.

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

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

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Ongoing Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date.

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

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

**Section 7.6. [Reserved].**

**Section 7.7. [Reserved].**

**Section 7.8. Rebate Fund.** The Fiscal Agent shall establish the Rebate Fund when instructed to deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto pursuant to Section 5.35 of the Borrower Loan Agreement.

## ARTICLE VIII

### REPRESENTATIONS AND COVENANTS

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

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

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Governmental Lender Note or the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws). For purposes of this Section 8.1(b), "to its knowledge" means the current, actual knowledge of any Authorized Governmental Lender Representative.

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

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

(e) The California Debt Limit Allocation Committee previously provided an allocation of the State's 2024 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Governmental Lender Note, and the Governmental Lender timely made any required carry forward election with respect to such volume cap allocation. The Governmental Lender elected to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, previously directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by Section 3.03 of said Notice.

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

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

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

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

**Section 8.5. Borrower Loan Agreement Performance.**

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

(b) The Governmental Lender will promptly notify, 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 or otherwise has knowledge of such event.

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



(a) The Fiscal Agent shall keep and maintain records pertaining to any funds and accounts established hereunder by the Fiscal Agent, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Note 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 Fiscal Agent and the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will (subject to the limited liability provisions hereof):

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered by the Governmental Lender, to the extent necessary in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Governmental Lender Note will be excluded from the gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(b) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions, which would cause the interest payable on the Tax-Exempt Governmental Lender Note to be includable in gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(c) Whenever and so often as requested by the Funding Lender (at the sole cost and expense of the Borrower), do and perform all acts and things permitted by law and necessary in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Governmental Lender Note will be excluded from the gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(d) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly

take any action, or knowingly permit or suffer any action to be taken, if the result of the same would be to cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note, or any other moneys which may be deemed to be proceeds of the Funding Loan funded with the 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 Tax-Exempt Governmental Lender Note; and

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

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower executed, delivered and will comply with the provisions of the Tax Certificate and Section 2 in the Regulatory Agreement, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full. In the event of any conflict between this Section 8.7 and the requirements of the Tax Certificate, the Tax Certificate shall control.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

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

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

**Section 8.9. Maintenance of Records.** The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan established with the Funding Lender, if any, including all deposits to and disbursements from said funds and accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

**Section 8.10. Immunities and Limitations of Responsibility of Governmental Lender.**

(a) The Governmental Lender shall be entitled to the advice of counsel, and the Governmental Lender shall be wholly protected as to action taken or omitted in reliance on such advice. The Governmental Lender may rely conclusively on any written notice or other document furnished to

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

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

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in the Borrower Loan Agreement and Section 7 of the Regulatory Agreement. Such indemnities shall survive payment of the Funding Loans and discharge of this Funding Loan Agreement.

## ARTICLE IX

### DEFAULT; REMEDIES

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

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

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

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender

and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the 30-day cure period and the subject matter of the default is not capable of cure within said 30-day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payment; or

(e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

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

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

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender and the Fiscal Agent 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, (B) the principal of and Prepayment Premium on the Funding Loan that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan, (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 (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 which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

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

(c) At any time following the third anniversary of the occurrence of an Event of Default and acceleration of the Funding Loan, the Governmental Lender may elect to pay the Funding Loan and the Governmental Lender Note by transferring and assigning the Security to the Funding

Lender, and upon such transfer the Funding Lender shall have no further rights against the Governmental Lender hereunder and such payment shall constitute payment in full of the Funding Loan and the Governmental Lender Note.

The Funding Lender hereby agrees that upon such transfer and assignment the Funding Lender shall no longer look to the Governmental Lender to receive payment of the principal and interest and all other sums, if any, which are due under the Governmental Lender Note, but shall look solely to the Security, the rights under the Security to enforce the indebtedness and other obligations of the Borrower and the other parties, and the funds and other assets transferred to the Funding Lender hereunder.

(d) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that neither the Fiscal Agent nor the Funding Lender shall pursue any remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

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

(a) Upon the occurrence of an Event of Default, the Funding Lender, or the Fiscal Agent at the direction of the Funding Lender, may, subject to the provisions of Section 9.2(c) hereof, this Section 9.3, Section 9.9 hereof and Section 9.15 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender or the Fiscal Agent 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 or the Fiscal Agent hereunder or now or hereafter existing at law or in equity or by statute.

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

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

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

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the

Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

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

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, or the Fiscal Agent at the direction of the Funding Lender, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Tax-Exempt Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to 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 60 days after the Borrower, the Fiscal Agent and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default (with a copy of such Written Notice provided to the Equity Investor), the Funding Lender, or the Fiscal Agent at the direction of the Funding Lender, shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

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

(f) Equity Investor to have the right to cure within any applicable cure period any default of the Borrower as described in Sections 9.3(d) and (e) above, and the Funding Lender shall accept any such cure as if performed by Borrower.

**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 or the Fiscal Agent at the direction of the Funding Lender:

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

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

(c) Third, to the payment of the amounts required to reimburse the Governmental Lender and the Funding Lender for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

(d) Fourth, 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.

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

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

**Section 9.6. Restoration of Positions.** If the Funding Lender, or the Fiscal Agent at the direction of 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 or the Fiscal Agent, then and in every such case the Governmental Lender and the Funding Lender or the Fiscal Agent 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 and the Fiscal Agent 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 or the Fiscal Agent 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 or the Fiscal Agent 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 or the Fiscal Agent may be exercised from time to time, and as often as may be deemed expedient, by the Funding Lender or the Fiscal Agent at the direction of 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, or the Fiscal Agent at the direction of the Funding Lender, the Funding Lender or the Fiscal Agent at the direction of the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

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

**Section 9.11. Waiver of Appraisal and Other Laws.**

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

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

**Section 9.12. Suits To Protect the Security.** The Funding Lender, or the Fiscal Agent at the direction of 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.** From and after the Conversion Date, in the event that the Funding Lender or any assignee or designee of the Funding Lender shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall have the right, to be exercised in its sole discretion, to succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such an assumption, if elected, would be effective from and after the effective date of such acquisition and would be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

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

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

## ARTICLE X

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

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

**Section 10.2. Amendments Require Funding Lender Consent.** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of the Borrower

Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender or the Fiscal Agent at the direction of the Funding Lender.

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

## **ARTICLE XI**

### **THE FISCAL AGENT**

**Section 11.1. Appointment of Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints U.S. Bank Trust Company, National Association as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

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

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

(b) 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, 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 conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any duty 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.

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

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

(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.

(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 shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

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

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

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

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

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

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

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

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

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

(h) The Fiscal Agent will not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other parties, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to any project financed with the proceeds of the Governmental Lender Note, malicious mischief, condemnation, and unusually severe weather or any similar event and/or occurrences beyond the control of the Fiscal Agent.

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

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

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

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

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

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

**Section 11.8. Compensation and Reimbursement.** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the reasonable 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 for services rendered prior to its resignation or removal shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

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

**Section 11.10. Resignation and Removal; Appointment of Successor.**

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

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

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

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after the later of such resignation, removal or incapability or the occurrence of such vacancy and receipt of written notice of such by the Governmental Lender, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender.

(from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

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

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

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

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

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

**Section 11.13. Appointment of Co-Fiscal Agent.** It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent

or hold title to the properties, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to it such properties, rights, powers, 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, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

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

**Section 11.15. No Recourse With Respect to Governmental Lender.** Notwithstanding anything to the contrary herein or to the contrary in any Funding Loan Document, no recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Lender Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Lender Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loans hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. The Funding Lender's remedies in the event of a default under the



Funding Loans shall be limited to those remedies set forth herein and, if an Event of Default also exists under the Borrower Loan Agreement or the Borrower Note, to commence foreclosure under the Security Instrument and the other Borrower Loan Documents and to exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under the Governmental Lender Note, the Funding Lender shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender, the Funding Lender or the Servicer may have against the Borrower.

## 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  
Mayor's Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Director  
Facsimile: (415) 701-5501

With copies to: Office of the City Attorney  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102-4682  
Attention: Finance Team  
Email: cityattorney@sfgov.org

City and County of San Francisco  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, CA 94102  
Attention: City Controller

If to the Borrower: 160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attention: Ann Silverberg, President

And a copy to: 160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
18201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: Asset Management

And a copy to: SFHDC 160 Freelon LLC  
c/o San Francisco Housing Development  
Corporation  
4439 Third Street  
San Francisco, CA 94124  
Attention: David J. Sobel  
Email: david@sfhdc.org

With copies to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, CA 90071  
Facsimile: (213) 559-0751  
Attention: Nicole Deddens

Goldfarb & Lipman LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Lynn Hutchins  
Email: lhutchins@goldfarblipman.com

And a copy to: Bank of America, N.A.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

And a copy to: Banc of America CDC Special Holding Company,  
Inc.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management

With a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Ste 1500  
Los Angeles, CA 90017  
Attention: Michael Williamson, Esq.  
Email: mwilliamson@buchalter.com

If to the Funding Lender:	Citibank, N.A. 388 Greenwich Street, 4th Floor Trading New York, NY 10013 Attention: Transaction and Asset Management Group Deal ID# _____ Facsimile: (212) 723-8209
With copies to:	Citibank, N.A. Transaction and Asset Management Group/Post Closing Citi Community Capital 3800 Citibank Center Tampa, Florida 33610 Deal ID# _____
and to:	Citibank, N.A. c/o Berkadia Commercial Servicing Department 323 Norristown Road, Suite 300 Ambler, PA 19002 Attention: Client Relations Manager Deal ID # _____ Facsimile: (215) 328-0305
And a copy of any notices of default sent to:	Citibank, N.A. 388 Greenwich Street, 17th Floor New York, NY 10013 Attention: General Counsel's Office Deal ID # _____ Facsimile: (646) 291-5754

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 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 on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the rights of the Governmental Lender to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and termination of this Funding Loan Agreement pursuant to this Section.

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

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

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

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

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

**Section 12.8. Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to Section 4.1.36 of the Borrower Loan Agreement or other provisions of the Borrower Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

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

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

**Section 12.10. Electronic Transactions.** The transactions described in this Funding Loan Agreement may be conducted and the 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. Notwithstanding the foregoing, original executed versions of each of the Funding Loan Documents shall be delivered to the Funding Lender in connection with the closing of the transactions described herein.

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

**Section 12.12. Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of \_\_\_\_\_ 1, 20\_\_ and will not be effective and binding upon the parties hereto unless and until the Conversion Date occurs.

[Remainder of page intentionally left blank]

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

CITIBANK, N.A., as Funding Lender

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

[Signature Page to 160 Freelon Funding Loan Agreement]

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

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

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

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

[Signature Page to 160 Freelon Funding Loan Agreement]

CITY AND COUNTY OF SAN FRANCISCO, as  
Governmental Lender

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



## EXHIBIT A

### FORM OF 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, 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  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

Dated [\_\_\_\_], 20\_\_

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned City and County of San Francisco ("Obligor") promises to pay to the order of CITIBANK, N.A. (together with its successors and assigns, "Holder") solely from the amounts pledged therefore under the below-defined Funding Loan Agreement, the maximum principal sum of \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED \_\_\_\_\_ THOUSAND DOLLARS (\$ \_\_\_\_\_) 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 \_\_\_\_\_ 1, 20\_\_ (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 the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts are 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.

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 permanent loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to 160 Freelon Housing Partners, L.P., a California limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_ (as the same may be

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

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. None of the Obligor, the State, or any political subdivision thereof (except the Obligor, 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 this Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this Governmental Lender Note or any of the Obligor’s agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. Neither the faith and credit nor the taxing power of the Obligor is pledged to the payment of the principal of or premium or interest on this Governmental Lender Note.

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

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

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

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

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

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be

cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

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

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

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

[Remainder of page intentionally left blank]

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

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_  
Daniel Lurie  
Mayor

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By \_\_\_\_\_  
Kenneth D. Roux, Deputy City Attorney

## **CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is the Governmental Lender Note described in the within mentioned Funding Loan Agreement.

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

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

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

## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[\_\_\_\_], [\_\_\_\_]

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
San Francisco, CA

[\_\_\_\_]  
[Location]

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Taxable Series 2025D-2

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

The undersigned, as holder (the "Holder") of the funding loan (the "Funding Loan") in the aggregate maximum principal amount of \$\_\_\_\_\_ from **CITIBANK, N.A.** (the "Funding Lender") to the **CITY AND COUNTY OF SAN FRANCISCO** (the "Governmental Lender") under an Amended and Restated Funding Loan Agreement dated as of \_\_\_\_\_ 1, 20\_\_ (the "Funding Loan Agreement") among the Funding Lender, the Governmental Lender, and U.S. Bank Trust Company, National Association, as fiscal agent, which Funding Loan is evidenced by the Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1 (the "Governmental Lender Note") issued under the Funding Loan Agreement, hereby represents and warrants 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 of the Borrower, 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 Borrower, the use of proceeds of the Funding Loan, the Governmental Lender Note 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] and the Governmental Lender Note. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Note.

3. The Holder is an Approved Transferee.

4. The Holder acknowledges that it is purchasing the Funding Loan or a participation therein and the Governmental Lender Note 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 or the Governmental Lender Note; provided, however, that the Holder may, sell or assign the Governmental Lender Note, the Funding Loan or participations in the Funding Loan as provided in and subject to the limitations in the Funding Loan Agreement.

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

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

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

[Signature Page to Required Transferee Representations]

[ ], as Holder

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

## EXHIBIT C

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

The following provisions shall apply to this Funding Loan Agreement (this “Agreement”) as if set forth in the text hereof. Capitalized terms used but not defined in this Exhibit C shall have the meanings given in this Agreement. As used herein, the Funding Lender and Fiscal Agent shall together be known as the “Obligated Party.”

1. Nondiscrimination Requirements.

(a) *Nondiscrimination in Contracts.* The Obligated Party shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. The Obligated Party 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 Labor and Employment Code Article 131.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party to remove from, City facilities personnel of such Obligated Party 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 Laws Requiring Access for People with Disabilities. The Obligated Party acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. The Obligated Party shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. The Obligated Party agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Obligated Party, its employees, agents or assigns will constitute a material breach of this Agreement.

6. Sunshine Ordinance. The Obligated Party acknowledges that this Agreement and all records related to its formation, the Obligated Party's performance of services pursuant to this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 7920 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 Obligated Party 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 Obligated Party's board of directors; the Obligated Party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in such Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Obligated Party. The Obligated Party 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. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Obligated Party is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. The Obligated Party is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of

obligations in this Section. By signing and executing this Agreement, the Obligated Party certifies that it complies with Article 111.

9. Requiring Health Benefits for Covered Employees. Labor and Employment Code Article 121 applies to this contract. The Obligated Party shall comply with the requirements of Article 121. For each Covered Employee, the Obligated Party shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If the Obligated Party 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 Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Obligated Party is subject to the enforcement and penalty provisions in Article 121.

10. Prohibition on Use of Public Funds for Political Activity. In performing services pursuant to this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party within the meaning of San Francisco Administrative Code Chapter 12M, the Obligated Party shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services pursuant to this Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of its services, the Obligated Party may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to the Obligated Party, or the Obligated Party collects such information on City's behalf, such information must be held by such Obligated Party in confidence and used only in performing the Agreement. The Obligated Party 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 Obligated Party agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. The Obligated Party is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

The requirements of Article 142 shall only apply to the Obligated Party'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. Article 142 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. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

14. Conflict of Interest. By executing this Agreement, the Obligated Party 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 City if it becomes aware of any such fact during the term of this Agreement.

15. Food Service Waste Reduction Requirements. The Obligated Party 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 remedies for noncompliance provided therein.

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

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

18. Prevailing Wages. Services to be performed by the Obligated Party under this Agreement may involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, or San Francisco Administrative Code Chapter 102 (collectively, "Covered Services"), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by the Obligated Party.

19. Assignment. The Services to be performed by the Obligated Party are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

20. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and each of the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**EXHIBIT D**  
**[RESERVED]**

**EXHIBIT E**  
**[RESERVED]**

## **EXHIBIT F**

### **FISCAL AGENT WIRING INSTRUCTIONS**

Bank Name:

Bank City and State:

ABA Number:

Account Name:

Account Number:

For Further Credit Account Name:

Reference:

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**EXHIBIT D(2) TO FORWARD PURCHASE AGREEMENT**

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**AMENDED AND RESTATED  
BORROWER LOAN AGREEMENT**

between

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

and

**160 FREELON HOUSING PARTNERS, L.P.,**  
as Borrower

relating to

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

Dated as of \_\_\_\_\_ 1, 20\_\_

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The interest of the Governmental Lender in this Amended and Restated Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”) and to Citibank, N.A., as funding lender (the “Funding Lender”), under that certain Amended and Restated Funding Loan Agreement, of even date herewith, by and among the City and County of San Francisco (the “Governmental Lender”), the Fiscal Agent and the Funding Lender, which governs a loan originated by Bank of America, N.A. and purchased by the Funding Lender on the Conversion Date, the proceeds of which were used by the Governmental Lender to fund the Borrower Loan.



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## **BORROWER LOAN AGREEMENT**

**THIS BORROWER LOAN AGREEMENT** (this “Borrower Loan Agreement”) is entered into as of \_\_\_\_\_ 1, 20\_\_ between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”), and **160 FREELON HOUSING PARTNERS, L.P.**, a California limited partnership (together with its successors and assigns, the “Borrower”).

### **WITNESSETH:**

WHEREAS, the Act (as defined herein) authorizes the Governmental Lender (a) to make loans to any person to provide financing for residential rental developments located within the City and County of San Francisco (the “City”), and intended to be occupied in part or in whole by persons of low and moderate income; (b) to borrow funds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with any such borrowing by 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 repayment of any such borrowing by the Governmental Lender; and

WHEREAS, the Borrower previously applied to the Governmental Lender to issue its revenue notes designated as the (a) Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, in the original maximum principal amount of \$\_\_\_\_\_ (the “Tax-Exempt Governmental Lender Note”) and (b) Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable), in the original maximum principal amount of \$\_\_\_\_\_ (the “Taxable Governmental Lender Note”) evidencing a loan (the “Funding Loan”) by Bank of America, N.A., a national banking association (the “Initial Funding Lender”) to Governmental Lender, and to use the proceeds thereof to make a loan (the “Borrower Loan”) to the Borrower evidenced by a Promissory Note (Tax Exempt) dated [Closing Date, 2025] (the “Tax-Exempt Construction Borrower Note”) and the Promissory Note (Taxable) dated [Closing Date, 2025] (the “Taxable Construction Borrower Note” and, together, the “Construction Borrower Notes”), each from the Borrower to the Initial Funding Lender, for the acquisition, construction, rehabilitation and development of an 85-unit (including one manager’s unit) affordable multifamily residential rental project located in the City, to be known as 160 Freelon (the “Project”); and

WHEREAS, the Borrower previously requested that the Governmental Lender enter into a Funding Loan Agreement, dated as of June 1, 2025 (the “Construction Funding Loan Agreement”), among the Governmental Lender, the Fiscal Agent and the Initial Funding Lender, under which the Initial Funding Lender made the Funding Loan in connection with the issuance of the Tax-Exempt Governmental Lender Note and the Taxable Governmental Lender Note, the proceeds of which were used under a Borrower Loan Agreement dated as of June 1, 2025 (the “Construction Borrower Loan Agreement”) among the Governmental Lender, the Fiscal Agent, the Initial Funding Lender and the Borrower, to make the Borrower Loan; and

WHEREAS, as security for the Tax-Exempt Governmental Lender Note and the Taxable Governmental Lender Note, the Governmental Lender assigned all of its interests, except for the

Unassigned Rights, in the Borrower Loan and the Construction Borrower Notes to the Initial Funding Lender, for security purposes only; and

WHEREAS, the Borrower, Initial Funding Lender and the Funding Lender entered into that Forward Purchase Agreement dated as of June 1, 2025 (the “Forward Purchase Agreement”), pursuant to which the Funding Lender agreed to acquire up to \$\_\_\_\_\_ principal amount of the Initial Funding Lender’s interests in the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note upon satisfaction of the terms and conditions set forth therein; and

WHEREAS, the Borrower Loan is secured by, among other things, that certain [Construction Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing] (as amended, restated and/or supplemented from time to time, the “Construction Security Instrument”), dated [Closing Date, 2025], made by the Borrower for the benefit of the Initial Funding Lender and assigned to the Governmental Lender and further assigned to the Fiscal Agent for the benefit of the Initial Funding Lender to secure the Funding Loan, encumbering the Project; and

WHEREAS, as a condition of the Funding Lender’s purchase of Initial Funding Lender’s interests in the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note, the Funding Lender requires that the Governmental Lender, Fiscal Agent and Borrower enter into certain agreements, including this Borrower Loan Agreement, to amend and restate the Construction Borrower Loan Agreement, the Construction Funding Loan Agreement, the Construction Security Instrument, and the Tax-Exempt Construction Borrower Note.

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. Specific Definitions.** For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

(b) 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.

(c) 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.

(d) 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.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

**Section 1.2. Definitions.** The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“*Act*” shall mean the Charter of the City and County of San Francisco, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“*Act of Bankruptcy*” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after the commencement thereof.

“*ADA*” shall have the meaning set forth in Section 4.1.38 hereof.

“*Additional Borrower Payments*” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default) and Section 5.14 (Expenses) and Section 10 (Prepayments) of the Borrower Note.

“*Agreement of Environmental Indemnification*” shall mean the Agreement of Environmental Indemnification, dated as of the Conversion Date, executed by the Borrower and Guarantor for the Beneficiary Parties (as defined therein) and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“*Appraisal*” shall mean an appraisal of the Project and Improvements, which appraisal shall be (a) performed by a qualified appraiser licensed in the State selected by the Funding Lender, and (b) satisfactory to the Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by the Funding Lender) in all respects.

“*Architect*” shall mean any licensed architect, space planner or design professional that the Borrower may engage from time to time, with the approval of the Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

“*Architect’s Agreement*” shall mean any agreement that the Borrower and any Architect from time to time may execute pursuant to which the Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by the Funding Lender.

“*Authorized Borrower Representative*” shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

“*Bankruptcy Code*” shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“*Bankruptcy Event*” shall have the meaning given to such term in the Security Instrument.

“*Bankruptcy Proceeding*” shall have the meaning set forth in Section 4.1.8 hereof.

“*Beneficiary Parties*” shall mean, collectively, the Funding Lender, the Governmental Lender and the Fiscal Agent.

“*Borrower*” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“*Borrower Affiliate*” shall mean, as to the Borrower, its General Partner or its Guarantor, (a) any entity that directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the Borrower, its General Partner or its Guarantor, (b) any corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, its General Partner or its Guarantor, (c) any partner, shareholder or, if a limited liability company, member of the Borrower, its General Partner or its Guarantor, or (d) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, its General Partner or its Guarantor (to the extent any of the Borrower, its General Partner or its Guarantor is a natural person).

“*Borrower Controlling Entity*” shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not for profit corporation, the shareholders thereof, if any.

“*Borrower Loan*” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Construction Borrower Loan Agreement in the original aggregate principal amount of \$\_\_\_\_\_, outstanding on the Conversion Date in the aggregate principal amount of \$[\_\_\_\_\_], as evidenced by the Borrower Note.

“*Borrower Loan Agreement*” shall mean this Borrower Loan Agreement.

“*Borrower Loan Documents*” shall mean this Borrower Loan Agreement, Borrower Note, the Security Instrument, the Continuing Disclosure Agreement, the Agreement of Environmental Indemnification, the Guaranty, the Replacement Reserve Agreement, the Covenant Agreement, the Forward Purchase Agreement, and all other documents or agreements evidencing or relating to the Borrower Loan.

“*Borrower Loan Payment Date*” shall mean (a) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (b) any other date on which any Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

“*Borrower Loan Payments*” shall mean the monthly loan payments payable pursuant to the Borrower Note.

“*Borrower Note*” shall mean that certain Amended and Restated Multifamily Note dated the Conversion Date made by Borrower and payable to the Fiscal Agent, as it may be amended,



supplemented or replaced from time to time, which Amended and Restated Multifamily Note amends and restates the Tax-Exempt Construction Borrower Note, previously endorsed by the Governmental Lender to the Fiscal Agent in connection with the Funding Loan.

*“Borrower Payment Obligations”* shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

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

*“Calculation Period”* shall mean three consecutive full Calendar Months occurring prior to the Conversion Date, as the same may be extended in accordance with Section 3.1 hereof.

*“Calendar Month”* shall mean each of the 12 calendar months of the year.

*“CC&Rs”* shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project.

*“Citibank”* shall mean Citibank, N.A., a national banking association, and its successors and assigns.

*“Closing Date”* means [Closing Date, 2025], the date that the initial Funding Loan proceeds were delivered and the initial Borrower Loan proceeds were disbursed pursuant to the Construction Funding Loan Agreement and Construction Borrower Loan Agreement, respectively.

*“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.

*“Collateral”* shall mean all collateral described in (a) this Borrower Loan Agreement (including, without limitation, all property in which the Governmental Lender and/or the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (b) the Security Instrument, or (c) any other Security Document, including, without limitation, the Project, all of which collateral (exclusive of the Unassigned Rights) is pledged and assigned to the Fiscal Agent and the Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

*“Computation Date”* shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

*“Condemnation”* shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

*“Continuing Disclosure Agreement”* shall mean that certain Continuing Disclosure Agreement, between the Borrower and Citibank, to be executed by the Borrower and Citibank in connection with Citibank’s purchase of the Tax-Exempt Governmental Lender Note, pursuant to which the Borrower

will agree to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Conversion Date, as amended, supplemented or restated from time to time.

“*Contractor*” shall mean any licensed general contractor or subcontractor that the Borrower may directly engage from time to time, with the approval of the Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

“*Contractual Obligation*” shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

“*Conversion Date*” shall mean [\_\_\_\_, 20\_\_], the date upon which the Funding Lender purchases the Tax-Exempt Governmental Lender Note from the Initial Funding Lender and assumes the role of the Funding Lender under the Funding Loan Documents.

“*Day*” or “*Days*” shall mean calendar days unless expressly stated to be Business Days.

“*Debt*” shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse or nonrecourse, short term or long term, direct or contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

“*Default Rate*” shall have the meaning given to that term in the Borrower Note.

“*Determination of Taxability*” shall mean (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum concerning the Tax-Exempt Governmental Lender Note issued by the National Office of the Internal Revenue Service in which the Governmental Lender and the Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation, or (e) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Tax-Exempt Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Tax-Exempt Governmental Lender Note, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“*Engineer*” shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that the Borrower may engage from time to time, with the approval of the Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

*“Engineer’s Contract”* shall mean any agreement that the Borrower and any Engineer from time to time may execute pursuant to which the Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by the Funding Lender.

*“Equipment”* shall have the meaning given to the term “Personalty” in the Security Instrument.

*“Equity Contributions”* shall mean the equity to be contributed by the Equity Investor to the Borrower, in accordance with and subject to the terms of the Partnership Agreement.

*“Equity Investor”* shall mean Bank of America, N.A., a national banking association, as the investor limited partner of the Borrower, and such entity’s successors and assigns in accordance with the terms of the Security Instrument and the Partnership Agreement.

*“ERISA”* shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

*“ERISA Affiliate”* shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

*“Event of Default”* shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall “exist” if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

*“Excess Revenues”* shall have the meaning ascribed thereto in Section 2.2 hereof.

*“Exchange Act”* shall mean the Securities Exchange Act of 1934, as amended.

*“Expenses of the Project”* shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed the Underwritten Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

*“Fair Market Value”* shall mean 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 Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of investment.

*“Fiscal Agent”* shall mean the Fiscal Agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is U.S. Bank Trust Company, National Association.

*“Forward Purchase Agreement”* shall have the meaning given to such term in the recitals to this Borrower Loan Agreement.

*“Funding Lender”* shall mean Citibank, N.A., in its capacity as lender under the Funding Loan, and any successor under the Funding Loan Agreement and the Borrower Loan Documents.

*“Funding Loan”* shall have the meaning given to such term in the recitals to this Borrower Loan Agreement.

*“Funding Loan Agreement”* means the Amended and Restated Funding Loan Agreement, of even date herewith, among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

*“Funding Loan Documents”* shall have the meaning given to that term in the Funding Loan Agreement.

*“GAAP”* shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

*“General Partner”* shall mean, collectively, (a) Related/160 Freelon Development Co., LLC, a California limited liability company, as administrative general partner, (b) SFHDC 160 Freelon LLC, a California limited liability company, as managing general partner, and/or (c) any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted without the Funding Lender’s approval pursuant to the Borrower Loan Documents), selected to be a general partner of the Borrower.

*“Governmental Authority”* shall mean (a) any governmental municipality or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (c) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

*“Governmental Lender”* shall have the meaning set forth in the first paragraph of this Borrower Loan Agreement.

*“Governmental Lender Note”* shall mean the Tax-Exempt Governmental Lender Note.

“*Gross Income*” shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of the Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by the Borrower in accordance with applicable law.

“*Gross Proceeds*” shall mean, without duplication, the aggregate of:

- (a) the net amount (after payment of all expenses of originating the Funding Loan) of the Funding Loan representing the proceeds of the Tax-Exempt Governmental Lender Note received by the Governmental Lender as a result of the origination of the Funding Loan;
- (b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan representing the proceeds of the Tax-Exempt Governmental Lender Note;
- (c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan representing the proceeds of the Tax-Exempt Governmental Lender Note; and
- (d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan representing the proceeds of the Tax-Exempt Governmental Lender Note.

“*Ground Lease*” shall mean that certain Ground Lease dated as of \_\_\_\_\_, 20\_\_\_\_, by and between the City and County of San Francisco, as lessor, and the Borrower, as lessee, with respect to the Land.

“*Guarantor*” shall mean The Related Companies, L.P., a New York limited partnership, or any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan.

“*Guaranty*” shall mean the Exceptions to Non-Recourse Guaranty, of even date herewith, by the Guarantor for the benefit of the Beneficiary Parties (as defined therein).

“*Improvements*” shall mean the 85-unit multifamily residential project upon the Land and known as 160 Freelon, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property.

“*Indemnified Party*” shall have the meaning set forth in Section 5.15 hereof.

“*Installment Computation Date*” shall mean any Computation Date other than the first Computation Date or the final Computation Date.

“*Interest Rate*” shall mean the rate of interest accruing on the Borrower Loan pursuant to such Borrower Note.

“*Land*” means the site comprising the real property described on Exhibit A to the Security Instrument.

“*Late Charge*” shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in Section 7 of the Borrower Note and Section 2.5 hereof.

“*Legal Action*” shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

“*Legal Requirements*” shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property of the Borrower (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (a) require repairs, modifications or alterations in or to all or part of the Project, or (b) in any way limit the use and enjoyment thereof.

“*Liabilities*” shall have the meaning set forth in Section 5.15 hereof.

“*Licenses*” shall have the meaning set forth in Section 4.1.22 hereof.

“*Lien*” shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “*Lien*” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

“*Management Agreement*” shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“*Manager*” shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

“*Material Adverse Change*” shall mean any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, the General Partner, the Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, the General Partner or the Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of the Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

*“Mortgaged Property”* shall have the meaning given to that term in the Security Instrument.

*“Net Operating Income”* shall mean: (a) the Gross Income, less (b) the Expenses of the Project.

*“Nonpurpose Investment”* shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

*“Ongoing Governmental Lender Fee”* shall have the meaning given to that term in the Funding Loan Agreement.

*“Other Charges”* shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

*“Partnership Agreement”* shall mean that certain [First Amended and Restated Agreement of Limited Partnership] of the Borrower dated as of \_\_\_\_\_, 2025, as the same may be amended, restated or modified in accordance with its terms.

*“Patriot Act”* shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

*“Patriot Act Offense”* shall have the meaning set forth in Section 4.1.48 hereof.

*“Permitted Encumbrances”* shall have the meaning given to that term in the Security Instrument.

*“Permitted Lease”* shall mean a lease and occupancy agreement pursuant to the form approved by the Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six months nor more than two years.

*“Person”* shall have the meaning given to that term in the Funding Loan Agreement.

*“Plan”* shall mean (a) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (b) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

*“Plans and Specifications”* shall mean the plans and specifications for the construction and/or rehabilitation of the Project approved by the Funding Lender.

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

*“Prepayment Premium”* shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any prepayment premium as set forth in the Borrower Note).

“*Project*” shall mean the Mortgaged Property (as defined in the Security Instrument) and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

“*Project Agreements and Licenses*” shall mean any and all Construction Contracts, Engineer’s Contracts, Architect’s Agreements and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“*Provided Information*” shall have the meaning set forth in Section 9.1.1(a) hereof.

“*Qualified Project Costs*” shall mean costs paid with respect to the Project that meet each of the following requirements: (a) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general Federal income tax principles and in accordance with United States Treasury Regulations § 1.103-8(a)(1), provided, however, that only such portion of interest accrued during construction or rehabilitation of the Project shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by a Borrower Affiliate or persons or entities treated as related to the Borrower within the meaning of Sections 1504, 267 and 707 of the Code (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (i) the actual out-of-pocket costs incurred by such Borrower Affiliate in constructing or rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower Affiliate, and (iii) any overhead expenses incurred by the Borrower Affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such Borrower Affiliate due to early completion of the Project (or any portion thereof); (b) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (c) the costs are paid after the earlier of 60 days prior to the date of a declaration of “official intent” to reimburse costs paid with respect to the Project (within the meaning of §1.150-2 of the United States Treasury Regulations) or the date of issue of the Governmental Lender Note, and (d) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Governmental Lender Note such costs were preliminary capital expenditures (within the meaning of United States Treasury Regulations § 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction or rehabilitation of the Project that do not exceed 20% of the issue price of the Governmental Lender Note (as defined in United States Treasury Regulations § 1.148-1), or (iii) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditure is paid).

“*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 the rebate analyst selected by the Borrower and acceptable to the Governmental Lender and the Funding Lender.

“*Rebate Analyst’s Fee*” shall mean the fee of the Rebate Analyst. The Rebate Analyst’s Fee is payable by the Borrower to the Rebate Analyst.

“*Rebate Fund*” shall mean the Rebate Fund created pursuant to Section 5.35 hereof.

“*Regulatory Agreement*” shall have the meaning given to that term in the Funding Loan Agreement.

“*Related Documents*” shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Partnership Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

“*Replacement Reserve Agreement*” shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“*Replacement Reserve Fund Requirement*” means the Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

“*Review Fee*” shall mean the \$3,000 fee payable to the Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.

“*Secondary Market Disclosure Document*” shall have the meaning set forth in Section 9.1.2 hereof.

“*Secondary Market Transaction*” shall have the meaning set forth in Section 9.1.1 hereof.

“*Securities*” shall have the meaning set forth in Section 9.1.1 hereof.

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

“*Security Documents*” shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan Agreement, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

“*Security Instrument*” shall mean the Amended and Restated Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as amended, restated and/or supplemented from time to time) of even date herewith, which amends and restates the Construction Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing made by the Borrower in favor of the Fiscal Agent for the benefit of the Funding Lender, to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

“*Servicer*” shall mean the servicer contracting with or appointed by the Funding Lender to service the Borrower Loan.

“*Servicing Agreement*” shall have the meaning given to that term in the Funding Loan Agreement.

“*State*” shall mean the State in which the Project is located.

“*Subordinate Debt*” shall mean (i) the \$\_\_\_\_\_ Subordinate Loan from the City acting by and through the Mayor’s Office of Housing and Community Development (the “MOHCD Loan”), or (ii) the \$\_\_\_\_\_ Subordinate Loan from the State of California Department of Housing and Community Development (the “AHSC Loan”), or both (i) and (ii), as the context may require.

“*Subordinate Lender*” shall mean (i) with respect to the MOHCD Loan, the City and County of San Francisco, acting by and through the Mayor’s Office of Housing and Community Development, or (ii) with respect to the AHSC Loan, the State of California Department of Housing and Community Development or both (i) and (ii), as the context may require.

“*Subordinate Loan Documents*” shall mean, individually and collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by the Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

“*Tax Counsel*” shall have the meaning set forth in the Funding Loan Agreement.

“*Taxes*” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

“*Tax-Exempt Borrower Note*” shall have the meaning given to such term in the recitals to this Borrower Loan Agreement.

“*Tax-Exempt Governmental Lender Note*” shall have the meaning given to such term in the recitals to this Borrower Loan Agreement.

“*Term*” shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

“*Title Company*” shall mean Old Republic Title Company.

“*Title Insurance Policy*” shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“*Transfer*” shall have the meaning given to such term in the Security Instrument.

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

“*Unassigned Rights*” shall have the meaning given to that term in the Funding Loan Agreement.

“*Underwritten Management Fee*” shall have the meaning set forth in the Covenant Agreement.

“Unit” shall mean a residential apartment unit within the Improvements.

“Written Consent” and “Written Notice” shall mean a written consent or notice signed by an Authorized Borrower Representative or an Authorized Governmental Lender Representative (as defined in the Funding Loan Agreement), the Funding Lender or the Fiscal Agent, as appropriate.

## ARTICLE II

### GENERAL

**Section 2.1. Acquisition of Funding Loan.** In order to provide funds for the purposes provided herein and to facilitate the acquisition of the Funding Loan by the Funding Lender from the Initial Funding Lender, the Governmental Lender agrees that it will, pursuant to the Law and in accordance with the Act, enter into the Funding Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof to the extent those actions and remedies are not delegated to the Fiscal Agent. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to the Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may, in its discretion, designate the Servicer to fulfill the rights and responsibilities granted by the Governmental Lender to the Funding Lender pursuant to this Section 2.1.

**Section 2.2. Security for the Funding Loan.** As security for the Funding Loan, the Governmental Lender previously pledged and assigned to the Fiscal Agent and the Funding Lender, as applicable, under and pursuant to the Construction Funding Loan Agreement (a) the Borrower Note and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement. All revenues and assets pledged and assigned thereby were immediately subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Fiscal Agent and the Funding Lender, as applicable.

With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(a) **Tax Covenants.** Seek specific performance of, and enforce, the tax covenants in Section 8.7 of the Funding Loan Agreement, the Regulatory Agreement, the Tax Certificate and this Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower’s obligation to pay amounts for credit to the Rebate Fund;

(b) **Regulatory Agreement.** Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive

relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender under the Regulatory Agreement or this Borrower Loan Agreement) only against Excess Revenues (defined below), if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the use of other funds; and

(c) ***Unassigned Rights.*** Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender under the Regulatory Agreement or the Borrower Loan Agreement) against Excess Revenues, if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute its action to a lien on the Project; or

(ii) except in connection with actions permitted under Section 2.2(b) above, take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan, or which the Governmental Lender has reason to know or expect would have the effect of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by the Funding Lender, the Fiscal Agent or the Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

As used in this Section 2.2, the term “Excess Revenues” means, for any period, the net cash flow of the Borrower available for distribution or payment to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking

fund payment, acceleration or otherwise) with respect to the Project, the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

**Section 2.3. Loan; Borrower Note.** The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The proceeds of the Borrower Loan were used by the Borrower to pay costs of the acquisition, construction, rehabilitation, development, equipping and/or operation of the Project.

As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The Governmental Lender assigned the Construction Borrower Note to the Fiscal Agent on the Closing Date as a condition to closing of the Borrower Loan and the Funding Loan.

**Section 2.4. Borrower Loan Payments.** The Borrower shall make Borrower Loan Payments in accordance with the Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 2:00 p.m., New York City time, on the date that is two (2) Business Days prior to the Borrower Loan Payment Date. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

Unless there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid directly to the Fiscal Agent.

**Section 2.5. Additional Borrower Payments.**

(a) The Borrower shall pay the following amounts:

(i) to the Servicer or the Funding Lender, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst's Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Fiscal Agent for remittance to the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan in connection with any federal or state tax audit;

(iii) to the Fiscal Agent, the Fiscal Agent's Fees;

(iv) [Reserved];

(v) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(vi) any Late Charge due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Servicer, and if there is no Servicer, such payments shall be made to the Fiscal Agent on behalf of the Funding Lender; and

(vii) to the Fiscal Agent, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Fiscal Agent incurred under the Borrower Loan Documents or the Funding Loan Documents as and when the same become due.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

(c) The Borrower shall pay to the Governmental Lender the Ongoing Governmental Lender Fee at the times and in the amounts specified in the Regulatory Agreement.

**Section 2.6. Overdue Payments; Payments in Default.** If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender or to the Servicer, a Late Charge in the amount and to the extent set forth in the Borrower Note, if any.

**Section 2.7. Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds.** The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender in accordance with the terms of the Borrower Note; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

**Section 2.8. Grant of Security Interest; Application of Funds.** To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Fiscal Agent and the Funding Lender, and grants to the Fiscal Agent and the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all Rents and all payments to or moneys held in the funds and accounts created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. The Borrower also grants to the Fiscal Agent and the Funding Lender a continuing security interest in, and agrees to hold for the benefit of the Fiscal Agent and the Funding Lender, all Rents in its possession prior to the payment of Rents or any portion thereof to the Fiscal Agent, the Funding Lender or the Servicer (to the extent that the Borrower is required to pay such Rents to the Fiscal Agent, the Funding Lender or the Servicer) except for Permitted Encumbrances. The Borrower shall not, without obtaining the prior Written Consent of the Funding Lender, further pledge, assign or grant any security interest in the Rents, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming the Fiscal Agent or the Funding Lender as the secured party, to be filed with respect thereto. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent, the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by the Funding Lender, in the Funding Lender's sole and absolute discretion.

**Section 2.9. Marshalling; Payments Set Aside.** The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender, the Fiscal Agent or the Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (a) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, the Guarantor or the General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (b) below; and (b) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (i) the amount of payments or the value of the transfer or (ii) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender or the Fiscal Agent in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

**Section 2.10. [Reserved].**

### **ARTICLE III**

**[RESERVED]**

### **ARTICLE IV**

## **REPRESENTATIONS AND WARRANTIES**

**Section 4.1. Borrower Representations.** To induce the Governmental Lender and the Funding Lender to execute this Borrower Loan Agreement, the Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Conversion Date and, subject to Section 4.2, will be complete and accurate, and deemed remade, except as otherwise noted through notice to the Funding Lender and approved by the Funding Lender, as of the Conversion Date, in accordance with the terms and conditions of the Borrower Note.

**4.1.1 Organization; Special Purpose.** The Borrower is a California limited partnership in good standing under the laws of the State, has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper corporate or limited partnership action, as appropriate, has duly



authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management, construction, rehabilitation and operation of the Project.

4.1.2 ***Proceedings; Enforceability.*** Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

4.1.3 ***No Conflicts.*** The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever (other than the lien of the Security Instrument) upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

4.1.4 ***Litigation; Adverse Facts.*** There is no Legal Action, nor is there a basis known to the Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or the Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and

adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or the Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, as applicable; or (c) in default with respect to any agreement to which the Borrower, the General Partner or the Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, the General Partner or the Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

**4.1.5 *Agreements; Consents; Approvals.*** Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

**4.1.6 *Consents and Approvals.*** No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**4.1.7 *Title.*** The Borrower shall have marketable title to the leasehold interest in the Project Site pursuant to the Ground Lease and ownership interest in the Project facilities and

equipment free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Borrower's fee (or leasehold, if applicable) interest in the Project and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project, including the Permitted Leases, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

4.1.8 **Survey.** To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

4.1.9 **No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Conversion Date, the Borrower has the ability to pay its debts as they become due.

4.1.10 **Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

4.1.11 **No Plan Assets.** The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

4.1.12 **Compliance.** The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

4.1.13 **Contracts.** All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and any Borrower Affiliate or the affiliates of the Borrower Controlling Entity of the Borrower, including without limitation that certain property management agreement by and between Borrower and RA Management, LLC) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

4.1.14 **Financial Information.** All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (a) are accurate and complete in all material respects, (b) accurately represent the financial condition of the Project as of the date of such reports, and (c) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

4.1.15 **Condemnation.** No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

4.1.16 **Federal Reserve Regulations.** No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

4.1.17 **Utilities and Public Access.** To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (a) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (b) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (c) the Borrower's responsibilities and share of expenses are

specified, and (d) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

4.1.18 ***Not a Foreign Person.*** The Borrower is not a “foreign person” within the meaning of § 1445(f)(3) of the Code.

4.1.19 ***Separate Lots.*** Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land. There are no pending or, to the Borrower’s best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

4.1.20 ***Enforceability.*** The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

4.1.21 ***Insurance.*** The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument, and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement and the Security Instrument.

4.1.22 ***Use of Property; Licenses.*** The Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the “Licenses”) required at this time for the construction and/or rehabilitation, and equipping of the Project have been obtained. To the Borrower’s knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower’s knowledge, pending or threatened that would result in a change of the zoning of the Project.

4.1.23 ***Flood Zone.*** At Closing, no structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Conversion Date, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, the Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 as amended or as required by the Servicer pursuant to its underwriting guidelines.

4.1.24 **Physical Condition.** The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction and/or rehabilitation, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

4.1.25 **Encroachments.** All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

4.1.26 **State Law Requirements.** The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

4.1.27 **Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

4.1.28 **Investment Company Act.** The Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

4.1.29 **Fraudulent Transfer.** The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower’s assets do not and, immediately

following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

4.1.30 ***Ownership of the Borrower.*** Except as set forth in the Ground Lease and the Partnership Agreement of the Borrower (including, without limitation, that certain purchase option and right of first refusal), the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in it.

4.1.31 ***Environmental Matters.*** To the best of the Borrower's knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification.

4.1.32 ***Name; Principal Place of Business.*** Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

4.1.33 ***Subordinated Debt.*** There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than [the Subordinate Debt and other] Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except the unsecured deferred Developer Fees not to exceed the amount permitted by the Funding Lender as determined on the Conversion Date and unsecured, subordinate partner loans to the Borrower permitted or required under the terms of the Partnership Agreement.

4.1.34 ***Filing of Taxes.*** The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

4.1.35 ***General Tax.*** All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein. In the event of any conflict between the terms of this Borrower Loan Agreement and the requirements of the Tax Certificate, the Tax Certificate shall control.

4.1.36 ***Approval of the Borrower Loan Documents and Funding Loan Documents.*** By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents

and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

4.1.37 ***Funding Loan Agreement.*** The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

4.1.38 ***Americans with Disabilities Act.*** The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 (“ADA”), to the extent required (as evidenced by an architect’s certificate to such effect).

4.1.39 ***Requirements of Act, Code and Regulations.*** The Project satisfies all requirements of the Act, the Code and the Regulations applicable to the Project.

4.1.40 ***Regulatory Agreement.*** The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

4.1.41 ***Intention To Hold Project.*** The Borrower intends to hold the Project for its own account and has no current plans, except as contemplated in the Partnership Agreement, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

4.1.42 ***Concerning the Managing General Partners.*** The managing general partner of the Borrower is a limited liability company wholly owned by a nonprofit public benefit corporation and is duly organized and validly existing under the laws of the State of California. Such General Partner has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by the General Partner for its own account and on behalf of the Borrower, as general partner of the Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.



Each General Partner has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of such General Partner.

Each General Partner is duly authorized to do business in the State.

The execution, delivery and performance by the Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of each General Partner on behalf of the Borrower, and by all necessary action on behalf of such General Partner.

The execution, delivery and performance by each General Partner, on behalf of the Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (a) such General Partner's organizational documents; (b) any other Legal Requirement affecting such General Partner or any of its properties; or (c) any agreement to which such General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to the Funding Lender pursuant to the Security Documents.

**4.1.43 *Government and Private Approvals.*** All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that the Borrower is not required to have as of the Conversion Date, will be obtained), and will be maintained in full force and effect at all times during the construction and/or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction and/or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of the Borrower, are required for the due execution, delivery and performance by the Borrower or the General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by the Borrower or the General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

**4.1.44 *Concerning the Guarantor.*** The Borrower Loan Documents and the Funding Loan Documents to which the Guarantor is a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantor and are legally valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their terms, except as enforceability may be limited by bankruptcy,

insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4.1.45 *No Material Defaults.*** Except as previously disclosed to the Funding Lender in writing, there exists no material violation of or material default by the Borrower under, and, to the best knowledge of the Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (a) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (b) any lease or other agreement affecting the Project or to which the Borrower is a party; (c) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which the Borrower or the Project may be bound; or (d) any mortgage, instrument, agreement or document by which the Borrower or any of its respective properties is bound; in the case of any of the foregoing: (i) which involves any Borrower Loan Document or Funding Loan Document; (ii) which involves the Project and is not adequately covered by insurance; (iii) that might materially and adversely affect the ability of the Borrower, the General Partner or the Guarantor to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (iv) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

**4.1.46 *Payment of Taxes.*** Except as previously disclosed to the Funding Lender in writing: (a) all tax returns and reports of the Borrower, the General Partner and the Guarantor required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon the Borrower, the General Partner and the Guarantor, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (b) the Borrower knows of no proposed tax assessment against it or against the General Partner or the Guarantor that would be material to the condition (financial or otherwise) of the Borrower, the General Partner or the Guarantor, and neither the Borrower nor the General Partner have contracted with any Governmental Authority in connection with such taxes.

**4.1.47 *Rights to Project Agreements and Licenses.*** Except for pledges of the Project Agreements and Licenses to the Funding Lender and the Subordinate Lenders, the Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. The Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents, the Funding Loan Documents and the Subordinate Loan Documents or as otherwise approved by the Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

**4.1.48 *Patriot Act Compliance.*** The Borrower is not now, nor has ever been (a) listed on any Government Lists (as defined below), (b) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) indicted for or convicted of any felony involving a crime or crimes of moral

turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term “Patriot Act Offense” shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) Bank Representative Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, or (v) the Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “Government Lists” shall mean (A) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control (“OFAC”), (B) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that the Funding Lender notified the Borrower in writing is now included in “Government Lists,” or (C) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that the Funding Lender notified the Borrower in writing is now included in “Government Lists.”

4.1.49 **Rent Schedule.** The Borrower has prepared a prospective unit absorption and rent collection schedule with respect to the Project substantially in the form attached as an exhibit to the Forward Purchase Agreement, which schedule takes into account, among other relevant factors (a) a schedule of minimum monthly rentals for the Units, and (b) any and all concessions including free rent periods, and on the basis of such schedule, the Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

4.1.50 **Other Documents.** Each of the representations and warranties of the Borrower or the General Partner contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of the Funding Lender.

4.1.51 **Subordinate Loan Documents.** The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

4.1.52 **Ground Lease.** The Ground Lease is in full force and effect and the Borrower has paid all rent and other amounts due and payable to the ground lessor thereunder. There exists no material violation of or material default by the Borrower under the Ground Lease, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default by any other party under the Ground Lease.

**Section 4.2. Survival of Representations and Covenants.** All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (a) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (b) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

**Section 5.1. Existence.** The Borrower shall (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (b) continue to engage in the business presently conducted by it, (c) obtain and maintain all material Licenses, and (d) qualify to do business and remain in good standing under the laws of the State.

**Section 5.2. Taxes and Other Charges.** The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all Taxes and Other Charges of any type or character charged to the Governmental Lender or the Funding Lender affecting the amount available to the Governmental Lender or the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including Taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such Taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such Taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such Taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.3. Repairs; Maintenance and Compliance; Physical Condition.** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

**Section 5.4. Litigation.** The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.5. Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project, including, without limitation, the Borrower Loan Documents.

**Section 5.6. Notices.** The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (a) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (b) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (c) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two Business Days of such filing.

**Section 5.7. Cooperate in Legal Proceedings.** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

**Section 5.8. Further Assurances.** The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (a) furnish to the Servicer, the Fiscal Agent and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that the Borrower's construction and/or rehabilitation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested by the Servicer, the Fiscal Agent or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (b) execute and deliver to the Servicer and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent and the Funding Lender may reasonably require from time to time; (c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (a) through (c) above, the Borrower shall not be required to do anything that has the effect of (i) changing the essential economic terms of the Borrower Loan or (ii) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (d) upon the Servicer's, the Fiscal Agent's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long

as such Potential Default or Event of Default, as applicable, is continuing pay for (i) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (ii) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer, the Fiscal Agent or the Funding Lender in each of the locations reasonably designated by the Servicer, the Fiscal Agent or the Funding Lender.

**Section 5.9. Delivery of Financial Information.** After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

**Section 5.10. Environmental Matters.** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender, the Fiscal Agent, the Governmental Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

**Section 5.11. Governmental Lender's, Fiscal Agent's and Funding Lender's Fees.** The Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender, the Fiscal Agent or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, and any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any examinations, audits or litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall survive, and remain valid and in effect notwithstanding, repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.12. Estoppel Statement.** The Borrower shall furnish to the Funding Lender, the Fiscal Agent or the Servicer for the benefit of the Funding Lender or the Servicer within 10 days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth, as applicable, with respect to the Borrower Note (a) the unpaid principal of the Borrower Note, (b) the applicable Interest Rate, (c) the date installments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Borrower Payment Obligations, and (e) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or the Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

**Section 5.13. Defense of Actions.** The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which the Governmental Lender or the Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. Neither the Governmental Lender nor the Funding Lender shall have any obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (a) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (b) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Governmental Lender or the Funding Lender is made a party or (c) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

**Section 5.14. Expenses.** The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit or examination costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and

investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result, in the case of the Governmental Lender, its willful misconduct, and in the case of any other party, its gross negligence or willful misconduct, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) and 43(i) of the Security Instrument.

The Governmental Lender shall not be responsible for any costs associated with any securitization of the Borrower Loan or the Funding Loan. The Borrower shall not be responsible for any costs associated with any securitization of the Borrower Loan or the Funding Loan, except to the extent provided in Article IX hereof or Section 5.15 below.

**Section 5.15. Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of the Governmental Lender, the Fiscal Agent or the Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, the Beneficiary Parties, Citigroup, Inc. and each of their respective officers, governing commissioners, member, directors, officials, employees, attorneys and agents (each an “Indemnified Party”), against any and all losses, damages (including, but not limited to consequential and punitive damages), claims, actions, liabilities, costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the “Liabilities”) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any of the Borrower’s obligations under Article IX);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;



(c) Any lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(g) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of the Borrower's applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(h) Any Determination of Taxability;

(i) Any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Tax-Exempt Governmental Lender Note;

(j) The Fiscal Agent's acceptance or administration of the Funding Loan Agreement or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Lender Note to which it is a party;

(k) Any breach (or alleged breach) by the Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by the Borrower, the General Partner, the Guarantor or their affiliates to the Governmental Lender, the Fiscal Agent, the Funding Lender, the Servicer or any other Person in connection with the Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by the Borrower of any agreement with respect to the provision of any substitute credit enhancement, if applicable);

(l) Any failure (or alleged failure) by the Borrower, the Funding Lender or the Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(m) The Project, the operation of the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(n) The use of the proceeds of the Borrower Loan and the Funding Loan,

except, in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party and, in the case of foregoing indemnification of the Fiscal Agent, the Funding Lender, the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion, except in all respects to the Governmental Lender, where the City Attorney shall retain sole and absolute discretion in the selection of the Governmental Lender's counsel; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation. In addition thereto, the Borrower will pay on demand all of the fees and expenses paid or incurred by the Fiscal Agent and/or the Governmental Lender in enforcing the provisions hereof, as more fully set forth in this Borrower Loan Agreement.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and termination of the Funding Loan Documents and in the case of the Servicer, any resignation or removal. The provisions of this Section 5.15 shall remain valid and in full effect notwithstanding repayment of the Borrower Loan hereunder and shall survive the termination of this Borrower Loan Agreement and the resignation or removal of the Fiscal Agent.

Nothing in this Section is intended to limit the Borrower's obligations contained in Sections 2.4 and 2.5 hereof or the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement.

**Section 5.16. No Warranty of Condition or Suitability by the Governmental Lender or the Funding Lender.** Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

**Section 5.17. Right of Access to the Project.** The Borrower agrees that the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations or the rights of Tenants under their tenant leases and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Fiscal Agent, the Funding Lender, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

**Section 5.18. Notice of Default.** The Borrower will provide the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer as soon as possible, and in any event not later than five Business Days after the occurrence of any Potential Default or Event of Default with a statement of an Authorized Borrower Representative describing the details of such Potential Default or Event of Default and any curative action the Borrower proposes to take.

**Section 5.19. Covenant With the Governmental Lender, the Fiscal Agent and the Funding Lender.** The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the Governmental Lender to execute and the Funding Lender to fund the Governmental Lender Note and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Fiscal Agent, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Note from time to time.

**Section 5.20. [Reserved].**

**Section 5.21. Maintenance of Insurance.** The Borrower will maintain the insurance required by the Security Instrument.

**Section 5.22. Information; Statements and Reports.** The Borrower shall furnish or cause to be furnished to the Governmental Lender and the Funding Lender:

(a) ***Financial Statements; Rent Rolls.*** In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(b) ***General Partner.*** From and after the Conversion Date, as soon as available and in any event within 120 days after the end of each fiscal year of the General Partner, copies of the financial statements of the General Partner as of such date, prepared in substantially the form previously delivered to the Governmental Lender and the Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as the Funding Lender may reasonably request;

(c) ***[Reserved];***

(d) ***Audit Reports.*** Promptly upon receipt thereof, copies of all reports, if any, submitted to the Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of the Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(e) ***Notices; Certificates or Communications.*** Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to the Borrower or the General Partner naming the Governmental Lender or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of the Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(f) ***Certification of Non-Foreign Status.*** Promptly upon request of the Funding Lender from time to time, a Certification of Non-Foreign Status (as such term is used in Section 1445 of the Code), executed on or after the date of such request by the Funding Lender;

(g) ***Compliance Certificates.*** Together with each of the documents required pursuant to Section 5.22(b) hereof submitted by or on behalf of the Borrower, a statement, in form and substance satisfactory to the Funding Lender and certified by an Authorized Borrower Representative, to the effect that the Borrower is in compliance with all covenants, terms and conditions applicable to the Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by the Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of the Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(h) ***Other Items and Information.*** Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of the Borrower, the General Partner, the Guarantor or the Project, as the Funding Lender or the Governmental Lender reasonably requests from time to time.

**Section 5.23. Additional Notices.** The Borrower will, promptly after becoming aware thereof, give notice to the Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against the Borrower, the General Partner or the Guarantor, or any Legal Action which is threatened against the Borrower, the General Partner or the Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of the Borrower, the General Partner, the Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which the Borrower, the General Partner or the Guarantor is a party or by or to which the Borrower, the General Partner or the Guarantor, or any of their respective properties or assets, may be bound or subject, which default would

have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of the Borrower under any of the CC&Rs (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of the Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least 15% of the tenants at the Project have been received by the Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of the Borrower's or the General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by the Borrower or the General Partner; or (iii) the nature of the trade or business of the Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, the General Partner and the Equity Investor) under the Partnership Agreement.

#### **Section 5.24. Compliance With Other Agreements; Legal Requirements.**

(a) The Borrower shall timely perform and comply with, and shall cause the General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and the Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) The Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish the Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. The Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&Rs and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of very low, low, or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. The Governmental Lender and the Funding Lender shall at all times have the right to audit, at the Borrower's expense, the Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of very low, low, or moderate income, and the Borrower shall supply all such information with respect thereto as the Governmental Lender or the Funding Lender, as applicable, may request and otherwise cooperate with the Funding Lender in any such audit. Without limiting the generality of the foregoing, the Borrower shall

properly obtain, comply with and keep in effect (and promptly deliver copies to the Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to acquire, construct, occupy, operate, market and lease the Project.

**Section 5.25. Maintenance of Project.** The Borrower shall maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continued operation of the Project in good order and condition, ordinary wear and tear excepted.

**Section 5.26. Fixtures.** The Borrower shall deliver to the Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which the Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

**Section 5.27. Income From Project.** The Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose.

**Section 5.28. Leases and Occupancy Agreements.**

(a) The Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without the Funding Lender's prior Written Consent if:

(i) The lease is a Permitted Lease;

(ii) The Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&Rs and is financially capable of performing all of its obligations under the lease; and

(iii) The lease conforms to the Rent Schedule attached as an exhibit to the Forward Purchase Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&Rs.

(b) If any Event of Default has occurred and is continuing, the Funding Lender may make written demand on the Borrower to submit all future leases for the Funding Lender's approval prior to execution. The Borrower shall comply with any such demand by the Funding Lender.

(c) No approval of any lease by the Funding Lender shall be for any purpose other than to protect the Funding Lender's security for the Borrower Loan and to preserve the Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by the Funding Lender shall result in a waiver of any default of the Borrower. In no event shall any approval by the Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(d) ***Landlord's Obligations.*** The Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(e) ***Leasing and Marketing Agreements.*** Except as may be contemplated in the Management Agreement with the Borrower's Manager, the Borrower shall not without the approval of the Funding Lender enter into any leasing or marketing agreement and the Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.29. Project Agreements and Licenses.** To the extent not heretofore delivered to the Funding Lender, the Borrower will furnish to the Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to the Funding Lender and consents to such assignments where required by the Funding Lender, all in form and substance acceptable to the Funding Lender. Neither the Borrower nor the General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to the Funding Lender and the Subordinate Lender.

**Section 5.30. Payment of Debt Payments.** In addition to its obligations under the Borrower Note, the Borrower will (a) duly and punctually pay or cause to be paid all principal of and interest on any Debt of the Borrower as and when the same become due on or before the due date; (b) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (c) promptly inform the Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (d) forward to the Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.31. ERISA.** The Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA to the extent applicable to the Borrower.

**Section 5.32. Patriot Act Compliance.** The Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. The Funding Lender shall have the right to audit the Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that the Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Funding Lender may, at its option, cause the Borrower to comply therewith and any and all costs and expenses incurred by the Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

The Borrower covenants that it shall comply with all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, the Borrower shall not take any action, or permit any action to be taken, that would cause the Borrower's representations and warranties in Section 4.1.48 and this Section 5.32 become untrue or inaccurate at any time during the

term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, the Borrower shall certify in writing to such Beneficiary Party that the Borrower's representations, warranties and obligations under Section 4.1.48 and this Section 5.32 remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. The Borrower shall immediately notify the Funding Lender in writing of (a) the Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) the Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) the Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. The Borrower shall also reimburse the Funding Lender for any expense incurred by the Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and the Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for the Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to the Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon the Funding Lender as a result thereof.

**Section 5.33. [Reserved].**

**Section 5.34. Tax Covenants.** The Borrower further represents, warrants and covenants that:

(a) **General.** The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Tax-Exempt Governmental Lender Note from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Tax-Exempt Governmental Lender Note, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.34 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Tax-Exempt Governmental Lender Note, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Tax-Exempt Governmental Lender Note for a period during which such portion of the Tax-Exempt Governmental Lender Note is held by a "substantial user" of any facility financed with the proceeds of the Tax-Exempt Governmental Lender Note or a "related person," as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.34.



(b) ***Use of Proceeds.*** The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) ***Limitation on Net Proceeds.*** At least 95% of the net proceeds (within the meaning of the Code) of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note actually expended shall be used to pay Qualified Project Costs that are costs of a “qualified residential rental project” (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) ***[Reserved]***.

(iii) ***Prohibited Facilities.*** The Borrower shall not use or permit the use of any proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) ***Limitation on Land.*** Less than 25% of the net proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) ***Accuracy of Information.*** The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower’s information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

(vi) ***Limitation of Project Expenditures.*** The acquisition, construction and equipping of the Project were not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the provision of an inducement resolution from the Governmental Lender with respect to the Project on August 21, 2023, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible “preliminary expenditures,” which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of construction, rehabilitation or acquisition of the Project.

(vii) ***Qualified Costs.*** The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note shall be used or deemed used exclusively to pay costs which are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code’s regulations) and (B) not made for the acquisition of existing property, to the

extent prohibited in Section 147(d) of the Code and that for the greatest number of buildings the proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed 50% or more by the proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other Borrower Affiliate or the holders or payees of the Funding Loan and the Borrower Note for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) ***Limitation on Maturity.*** The average maturity of the Tax-Exempt Governmental Lender Note does not exceed 120% of the average reasonably expected economic life of the Project to be financed by the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (i) the Closing Date for the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note or (ii) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) ***No Arbitrage.*** The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Funding Loan or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the Tax-Exempt Governmental Lender Note to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Borrower Note relating to the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such

investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Funding Loan and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and not later than forty-five days after the final Computation Date and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(e) ***No Federal Guarantee.*** Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Tax-Exempt Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) ***Representations.*** The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Tax-Exempt Governmental Lender Note for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) ***Qualified Residential Rental Project.*** The Borrower hereby covenants and agrees that the Project will be operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Tax-Exempt Governmental Lender Note remains outstanding, to the end that the interest on the Tax-Exempt Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all provisions of the Regulatory Agreement.

(h) ***Information Reporting Requirements.*** The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Tax-Exempt Governmental Lender Note to be filed with the Internal Revenue Service within prescribed time limits.

(i) ***Funding Loan Not a Hedge Bond.*** The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan funded with proceeds of the Tax-Exempt Governmental Lender Note will be used to carry out the governmental purposes of the Funding Loan within the three year period beginning on the Closing Date.

(j) ***Termination of Restrictions.*** Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.14 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) ***Public Approval.*** The Borrower covenants and agrees that the proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Tax-Exempt Governmental Lender Note.

(l) ***40/60 Test Election.*** The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) ***Modification of Tax Covenants.*** Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.34 may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Tax-Exempt Governmental Lender Note to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the includability of interest on the Tax-Exempt Governmental Lender Note in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.34, and the Borrower and

the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney in fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.34; provided, however, that the Funding Lender shall take no action under this Section 5.34 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.34.

The Borrower irrevocably authorizes and directs the Funding Lender, the Fiscal Agent and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Fiscal Agent, the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan in an amount related to the amount of the Borrower Loan.

(n) ***Compliance With Tax Certificate.*** In furtherance of the covenants in this Section 5.34, the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Borrower Loan Agreement and made a part of this Borrower Loan Agreement as if set forth in this Borrower Loan Agreement in full. In the event of a conflict between the terms of this Borrower Loan Agreement and the Tax Certificate, the terms of the Tax Certificate shall control.

#### **Section 5.35. Payment of Rebate.**

(a) ***Arbitrage Rebate.*** The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Funding Loan or the Tax-Exempt Governmental Lender Note in accordance with Section 148(f) of the Code including:

(i) ***Delivery of Documents and Money on Computation Dates.*** The Borrower will deliver to the Servicer, or, if there is no Servicer, to the Funding Lender, with a copy to the Fiscal Agent, within 55 days after each Computation Date:

(A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) (1) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less [the future value of] any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less [the future value of] any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) *Correction of Underpayments.* If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (A) pay to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (B) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Tax-Exempt Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) *Records.* The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after: the later of the final maturity of the Tax-Exempt Governmental Lender Note; or the date the Funding Loan is retired in full.

(iv) *Costs.* The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) *No Diversion of Rebatable Arbitrage.* The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan funded with the proceeds of the Tax-Exempt Governmental Lender Note were not subject to Section 148(f) of the Code.

(vi) *Modification of Requirements.* If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) ***Rebate Fund.*** The Fiscal Agent shall establish and hold a separate fund designated as the “Rebate Fund.” The Fiscal Agent shall deposit or transfer to the credit of the

Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(c) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund, and the Fiscal Agent shall advise the Governmental Lender and the Servicer in writing of the date and amount of any payment so made.

(d) All payments to the United States of America pursuant to this Section 5.35 shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst as set forth in this Section 5.35).

(e) The Borrower shall preserve all statements, forms and explanations received and delivered pursuant this Section 5.35 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

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

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

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.35 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender.

**Section 5.36. Covenants Under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

**Section 5.37. Continuing Disclosure Agreement.** In connection with the purchase of the Tax-Exempt Governmental Lender Note by Citibank on the Conversion Date, the Borrower and

Citibank shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement. The duties and obligations of the Borrower under the Continuing Disclosure Agreement shall be as set forth in the Continuing Disclosure Agreement.

**Section 5.38. Annual CDIAC Reporting.** No later than September 30 of each calendar year (commencing September 30, 2025), the Borrower agrees to provide to the Governmental Lender the information required by Section 8855(k)(1) of the California Government Code so that the Governmental Lender can file the annual report required thereby with the California Debt and Investment Advisory Commission. This covenant shall remain in effect until the later of the date (i) the Governmental Lender Note is no longer outstanding or (ii) the proceeds of the Governmental Lender Note have been fully spent.

## ARTICLE VI

### NEGATIVE COVENANTS

The Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of the Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. The Borrower covenants and agrees that it will not, directly or indirectly:

**Section 6.1. Management Agreement.** Without first obtaining the Funding Lender's prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld or delayed) and subject to the Regulatory Agreement: (a) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (b) reduce or consent to the reduction of the term of the Management Agreement; (c) increase or consent to the increase of the amount of any charges under the Management Agreement; (d) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (e) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement).

**Section 6.2. Dissolution.** Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

**Section 6.3. Change in Business or Operation of Property.** Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

**Section 6.4. Debt Cancellation.** Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.



**Section 6.5. Assets.** Purchase or own any real property or personal property incidental thereto other than the Project.

**Section 6.6. Transfers.** Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument and the Regulatory Agreement, nor transfer any material License required for the operation of the Project.

**Section 6.7. Debt.** Other than as otherwise expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (a) the Borrower Payment Obligations, (b) Subordinate Debt, (c) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (d) trade payables incurred in the ordinary course of business, (e) deferred developer fee, and (f) any General Partner or limited partner loan permitted or required by the Partnership Agreement.

**Section 6.8. Assignment of Rights.** Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

**Section 6.9. Principal Place of Business.** Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender, the Governmental Lender, the Fiscal Agent and the Servicer.

**Section 6.10. Partnership Agreement.** Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Partnership Agreement, except as permitted in the Security Agreement; provided, however, the consent of the Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of the Borrower as defined in and permitted by the Security Instrument.

**Section 6.11. ERISA.** Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

**Section 6.12. No Hedging Arrangements.** Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13. Loans and Investments; Distributions; Related Party Payments.**

(a) Without the prior Written Consent of the Funding Lender in each instance, the Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Partnership Agreement, Section 5.27 hereof and subject to the limitations set forth in the Security Instrument).

(b) [Reserved].

**Section 6.14. Amendment of Related Documents or CC&Rs.** Without the prior Written Consent of the Funding Lender in each instance, except as provided herein or in the [Forward Purchase Agreement], the Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&Rs (including, without limitation, those contained in this Borrower Loan Agreement, any Architect's Agreement or Engineer's Contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

**Section 6.15. Personal Property.** The Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than the Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in the Borrower at the time of installation, without the Funding Lender's prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

**Section 6.16. Fiscal Year.** Without the Funding Lender's Written Consent, which shall not be unreasonably withheld, neither the Borrower nor General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

**Section 6.17. Publicity.** Neither the Borrower nor the General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify the Funding Lender or any of its affiliates as the source of the financing provided for herein, without the prior written approval of the Funding Lender in each instance (provided that nothing herein shall prevent the Borrower or the General Partner from identifying the Funding Lender or its affiliates as the source of such financing to the extent that the Borrower or the General Partner are required to do so by disclosure requirements applicable to publicly held companies or any Governmental Authority). The Borrower and the General Partner agree that no sign shall be posted on the Project in connection with the construction and/or rehabilitation of the Improvements unless such sign identifies Citigroup and its affiliates as the source of the financing provided for herein or the Funding Lender consents to not being identified on any such sign.

**Section 6.18. Subordinate Loan Documents.** Without the Funding Lender's prior written consent, the Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

**Section 6.19. Ground Lease.** Without the Funding Lender's prior written consent, the Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Ground Lease.

## **ARTICLE VII**

**[RESERVED]**

## **ARTICLE VIII**

### **DEFAULTS**

**Section 8.1. Events of Default.** Each of the following events shall constitute an "Event of Default" under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of any Borrower Note or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of any Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, any Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default as defined or described in the Borrower Note, the Security Instrument or any other Borrower Loan Document occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs) and any applicable notice and/or cure period has expired;

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Conversion Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within 90 days of such event with another non-profit Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) [Reserved];

(h) the failure by the Borrower or any ERISA Affiliate of the Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of the Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of the Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon the Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of \$50,000;

(i) a Bankruptcy Event shall occur with respect to the Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within 30 days after notice thereof from the Funding Lender;

(j) all or any part of the property of the Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within 30 days of the date thereof;

(k) subject to Section 10.16 hereof, the Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$100,000, and such failure continues beyond the expiration of any and all applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting the Borrower, any General Partner or Guarantor, or property of the Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or

Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within 60 days after notice thereof from the Funding Lender;

(m) a final judgment or decree for monetary damages in excess of \$50,000 or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against the Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within 60 days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty), provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within 60 days after notice thereof from the Funding Lender;

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$50,000 or more shall be rendered against the Borrower, any General Partner or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed within 60 days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against the Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of the Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhandled and unstayed for a period of 60 days, or in any event later than five Business Days prior to the date of any proposed sale thereunder; provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or

the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within 60 days after notice thereof from the Funding Lender;

(o) [Reserved];

(p) [Reserved];

(q) the Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Project orders or requires that construction or rehabilitation of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of 30 consecutive days;

(r) [Reserved];

(s) [Reserved];

(t) [Reserved];

(u) [Reserved];

(v) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, after the expiration of all applicable notice and cure periods;

(w) [Reserved]; or

(x) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 9.1), as and when required, which continues for a period of 30 days after written notice of such failure by the Funding Lender or the Servicer on its behalf to the Borrower (with a copy to the Governmental Lender and the Equity Investor); provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such 30-day period, and the Borrower shall have commenced to cure such failure within such 30-day period and thereafter diligently and expeditiously proceeds to cure the same, such 30-day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed 60 days, for a total of 90 days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

## **Section 8.2. Remedies.**

**8.2.1 Acceleration.** Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by the Funding Lender, in the Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

**8.2.2 Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender or the Fiscal Agent, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until the Funding Lender has exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations have been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor

shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

8.2.3 **Delay.** No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender or the Fiscal Agent shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender and the Fiscal Agent reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

8.2.4 **Waiver of Set Off.** Upon the occurrence of an Event of Default, the Funding Lender may, at any time and from time to time, without notice to the Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of the Borrower to the Funding Lender or the Fiscal Agent arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

8.2.5 **Assumption of Obligations.** In the event that the Funding Lender, the Fiscal Agent 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 this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents and 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.

8.2.6 **Accounts Receivable.** Upon the occurrence of an Event of Default, the Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, Note and other documents evidencing the Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of the Funding Lender.

8.2.7 **Defaults Under Other Documents.** The Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.



8.2.8 [Reserved].

8.2.9 [Reserved].

8.2.10 ***Right To Directly Enforce.*** Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

8.2.11 ***Power of Attorney.*** Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, the Borrower hereby constitutes and appoints the Funding Lender, or an independent contractor selected by the Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes performance of the Borrower's obligations under this Borrower Loan Agreement in the name of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## ARTICLE IX

### SPECIAL PROVISIONS

#### Section 9.1. Sale of Note and Secondary Market Transaction.

9.1.1 ***Cooperation.*** Subject to the restrictions of Section 2.4 of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more sales or assignments of all or a portion of the Governmental Lender Note or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Note (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Governmental Lender shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify the Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward-looking statements or lack of audit, and (iii) at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase Is and, if appropriate, Phase IIs), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this subparagraph (a) being called the “Provided Information”), together, if customary, with appropriate verification of and/or consents (including, without limitation, auditor consents) to include or incorporate by reference the Provided Information in an offering document or otherwise provide the Provided Information to investors or potential investors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

**9.1.2 Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

**9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents.** In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide,

information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender, the Governmental Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender, the Governmental Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

The Borrower and the Funding Lender agree and acknowledge that the Governmental Lender undertakes no obligation hereunder or in the Funding Loan Agreement to participate in the preparation of, or to approve, any Secondary Market Disclosure Document and the parties hereto agree that any Secondary Market Disclosure Document will, unless approved in advance by the Governmental Lender in writing, disclose no more regarding the Governmental Lender than its name and status as a political subdivision of the State of California and that the Governmental Lender Note is a limited obligation of the Governmental Lender secured solely by the payments made by the Borrower under the Borrower Note and the Borrower Loan Agreement.

**9.1.4 *Borrower Indemnity Regarding Filings.*** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (a) indemnify the Funding Lender, the Fiscal Agent, the Governmental Lender and the underwriter group for any securities (the “Underwriter Group”) for any Liabilities to which the Funding Lender, the Fiscal Agent, the Governmental Lender, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (b) reimburse the Funding Lender, the Fiscal Agent, the Governmental Lender, the Servicer, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Fiscal Agent, the Governmental Lender, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**9.1.5 *Indemnification Procedure.*** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In

the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

**9.1.6 Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (a) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (b) the opportunity to correct and prevent any statement or omission; and (c) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## **ARTICLE X**

### **MISCELLANEOUS**

**Section 10.1. Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (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), or five calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Governmental Lender:      City and County of San Francisco  
Mayor's Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Director  
Facsimile: (415) 701-5501

With copies to:	<p>Office of the City Attorney  City Hall  1 Dr. Carlton B. Goodlett Place, Room 234  San Francisco, CA 94102-4682  Attention: Finance Team  Email: cityattorney@sfgov.org</p> <p>City and County of San Francisco  City Hall  1 Dr. Carlton B. Goodlett Place, Room 316  San Francisco, CA 94102  Attention: City Controller</p>
If to the Borrower:	<p>160 Freelon Housing Partners, L.P.  c/o Related California  44 Montgomery Street, Suite 1310  San Francisco, CA 94104  Attention: Ann Silverberg, President</p>
And a copy to:	<p>160 Freelon Housing Partners, L.P.  c/o The Related Companies of California, LLC  18201 Von Karman Avenue, Suite 900  Irvine, CA 92612  Attention: Asset Management</p>
And a copy to:	<p>SFHDC 160 Freelon LLC  c/o San Francisco Housing Development  Corporation  4439 Third Street  San Francisco, CA 94124  Attention: David J. Sobel  Email: david@sfhdc.org</p>
With copies to:	<p>Bocarsly Emden Cowan Esmail &amp; Arndt LLP  633 West Fifth Street, Suite 5880  Los Angeles, CA 90071  Facsimile: (213) 559-0751  Attention: Nicole Deddens</p> <p>Goldfarb &amp; Lipman LLP  1300 Clay Street, 11<sup>th</sup> Floor  Oakland, CA 94612  Attn: Lynn Hutchins  Email: lhutchins@goldfarbblipman.com</p>

With a copy to: Bank of America, N.A.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

And to: Banc of America CDC Special Holding Company,  
Inc.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management

With a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Ste 1500  
Los Angeles, CA 90017  
Attention: Michael Williamson, Esq.  
Matter No.: B0965-0842

If to the Funding Lender: Citibank, N.A.  
388 Greenwich Street, 4th Floor Trading  
New York, NY 10013  
Attention: Transaction and Asset Management  
Group  
Deal ID# \_\_\_\_\_  
Facsimile: (212) 723-8209

With copies to: Citibank, N.A.  
Transaction and Asset Management Group/Post  
Closing  
Citi Community Capital  
3800 Citibank Center  
Tampa, Florida 33610  
Deal ID# \_\_\_\_\_

and to: Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, PA 19002  
Attention: Client Relations Manager  
Deal ID # \_\_\_\_\_  
Facsimile: (215) 328-0305

And a copy of any notices of  
default sent to:

Citibank, N.A.  
388 Greenwich Street, 17th Floor  
New York, NY 10013  
Attention: General Counsel's Office  
Deal ID # \_\_\_\_\_  
Facsimile: (646) 291-5754

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties as provided herein.

**Section 10.2. Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

**Section 10.3. Survival.** This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the Fiscal Agent, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Fiscal Agent, the Funding Lender and the Servicer.

**Section 10.4. Preferences.** To the extent the Borrower makes a payment to the Governmental Lender, the Fiscal Agent or the Servicer, or the Governmental Lender, the Fiscal Agent or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer. In furtherance of the preceding sentence, the Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations.

**Section 10.5. Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower

hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

**Section 10.6. Offsets, Counterclaims and Defenses.** The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender, the Fiscal Agent or the Servicer with respect to a Borrower Loan Payment. Any assignee of the Funding Lender's or the Fiscal Agent's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 10.7. Publicity.** The Funding Lender and the Servicer (and any affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their affiliates. All news releases, publicity or advertising by the Borrower or any Borrower Affiliate through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Governmental Lender, the Funding Lender or the Servicer, as applicable.

**Section 10.8. Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 10.9. No Third Party Beneficiaries.** The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 10.10. Assignment.** The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all the Funding Lender's or the Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, including an assignment by Bank of America, N.A. to Citibank, N.A. on the Conversion Date, subject to the requirements of Article IV of the Funding Loan Agreement. Upon such assignment, all references to the Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed



to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of the Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by the Funding Lender before such assignment. In connection with any proposed assignment, the Funding Lender may disclose to the proposed assignee any information that the Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, the General Partner, the Guarantor or any Borrower Affiliate, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

#### **Section 10.11. [Intentionally Omitted.]**

**Section 10.12. Governmental Lender, Funding Lender, Fiscal Agent and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (a) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (b) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any of the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (c) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent and the Borrower, or to create an equity in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 10.13. Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 10.14. Term of Borrower Loan Agreement.** This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.11, 5.14, 5.15, 5.34, 5.35, 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.15, as well as under Section \_\_ of the Covenant Agreement, shall survive the termination of this Borrower Loan Agreement.

**Section 10.15. Reimbursement of Expenses.** If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for fees of such attorneys and such other expenses so incurred.

From and after the Conversion Date, the Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Note.

**Section 10.16. Permitted Contests.** Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, the Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of the Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to the Governmental Lender's or the Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to the Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless the Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of the Borrower's intent to so contest or object thereto, and unless (a) the Borrower has, in the Governmental Lender's and the Funding Lender's judgment, a reasonable basis for such contest, (b) the Borrower pays when due any portion of the claim, demand, levy or assessment to which the Borrower does not object, (c) the Borrower demonstrates to the Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (d) the Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to the Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to the Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (e) the Borrower at all times prosecutes the contest with due diligence, and (f) the Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, the amount so determined to be due and owing by the Borrower. In the event that the Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, any payment required to be made pursuant to clause (f) of the preceding sentence, an Event of Default shall have occurred, and the Funding Lender may draw or realize upon any bond or other

security delivered to the Funding Lender in connection with the contest by the Borrower, in order to make such payment.

**Section 10.17. Funding Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by the Funding Lender. The Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of the Funding Lender. No such approval shall result in a waiver of any default of the Borrower. In no event shall the Funding Lender's approval be a representation of any kind with regard to the matter being approved.

**Section 10.18. Funding Lender Determination of Facts.** The Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

**Section 10.19. Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

**Section 10.20. Determinations by Lender.** Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**Section 10.21. Governing Law.** This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Section 10.22. Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

**Section 10.23. Successors and Assigns.** This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities.

**Section 10.24. Severability.** The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

**Section 10.25. Entire Agreement; Amendment and Waiver.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered herein. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver.

**Section 10.26. Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 10.27. Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 10.28. Servicer.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 39 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless the Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

**Section 10.29. Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

**Section 10.30. Waiver of Trial by Jury.** The Governmental Lender does not agree to not elect a trial by jury or to waive any jury trial and does not consent to any resolution by judicial reference. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND ONLY TO THE EXTENT ENFORCEMENT OF SUCH AGREEMENT WOULD NOT ADVERSELY AFFECT THE FISCAL AGENT AND THE ABILITY OF THE GOVERNMENTAL LENDER TO ELECT A TRIAL BY JURY, THE BORROWER (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY THE BORROWER,

KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, THE BORROWER AGREES TO THE RESOLUTION OF ALL DISPUTES BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE SECURITY INSTRUMENT.

**Section 10.31. Modifications.** Modifications (if any) to this Borrower Loan Agreement (“Modifications”) are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to the Borrower or such transferee.

**Section 10.32. Reference Date.** This Borrower Loan Agreement is dated for referenced purposes only as of \_\_\_\_\_ 1, 20\_\_ and will not be effective and binding on the parties hereto unless and until the Conversion Date (as defined herein) occurs.

## ARTICLE XI

### LIMITATIONS ON LIABILITY

**Section 11.1. Limitation on Liability.** Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Note.

**Section 11.2. Limitation on Liability of Lender.** Notwithstanding anything to the contrary herein or in any other instrument to the contrary, the Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (any prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any 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 Borrower Loan Agreement, the Funding Loan, the Governmental Note or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender’s sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (any prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 11.3. Waiver of Personal Liability.** Notwithstanding anything to the contrary herein or in any other instrument to the contrary, no recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Borrower Loan Agreement and the issuance of the Governmental Note.

**Section 11.4. Limitation on Liability of the Funding Lender's Officers, Employees, Etc.**

(a) The Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of the Governmental Lender, the Fiscal Agent and the Funding Lender, nor any of its commissioners, officers, directors, employees or agents shall be liable or responsible for (i) any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes willful misconduct on the part of the Governmental Lender, or gross negligence or willful misconduct on the part of the Funding Lender.

(b) None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project or the Mortgaged Property. The Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. The Governmental Lender and the Funding Lender are not joint venture partners with the Borrower or with each other in any manner whatsoever. Prior to default by the Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the

Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of the Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.5. Delivery of Reports, Etc.** The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

**Section 11.6. City Contracting Provisions.** The Borrower covenants and agrees to comply with the provisions set forth in Exhibit B hereto.

[Balance of page left blank intentionally]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above.

BORROWER:

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg, President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel, Chief Executive Officer



GOVERNMENTAL LENDER:

**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

[Signature Page to 160 Freelon Borrower Loan Agreement]

Agreed to and Acknowledged by:

**FUNDING LENDER:**

**CITIBANK, N.A.**

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

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

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

[Signature Page to 160 Freelon Borrower Loan Agreement]

**EXHIBIT A**  
**MODIFICATIONS**

None.

## EXHIBIT B

### MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Borrower Loan Agreement (this “Agreement”) as if set forth in the text hereof. Capitalized terms used but not defined in this Exhibit B shall have the meanings given in this Agreement. As used herein, the Funding Lender and Fiscal Agent shall together be known as the “Obligated Party.”

1. Nondiscrimination Requirements.

(a) *Nondiscrimination in Contracts.* The Obligated Party shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132. The Obligated Party shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. The Obligated Party is subject to the enforcement and penalty provisions in Articles 131 and 132.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. The Obligated Party 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 Labor and Employment Code Article 131.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party to remove from, City facilities personnel of such Obligated Party 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 Laws Requiring Access for People with Disabilities. The Obligated Party acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. The Obligated Party shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. The Obligated Party agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Obligated Party, its employees, agents or assigns will constitute a material breach of this Agreement.

6. Sunshine Ordinance. The Obligated Party acknowledges that this Agreement and all records related to its formation, the Obligated Party's performance of services pursuant to this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 7920 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 Obligated Party 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 Obligated Party's board of directors; the Obligated Party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in such Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Obligated Party. The Obligated Party 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. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Obligated Party is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. The Obligated Party is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of

obligations in this Section. By signing and executing this Agreement, the Obligated Party certifies that it complies with Article 111.

9. Requiring Health Benefits for Covered Employees. Labor and Employment Code Article 121 applies to this contract. The Obligated Party shall comply with the requirements of Article 121. For each Covered Employee, the Obligated Party shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If the Obligated Party 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 Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Obligated Party is subject to the enforcement and penalty provisions in Article 121.

10. Prohibition on Use of Public Funds for Political Activity. In performing services pursuant to this Agreement, the Obligated Party 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 Obligated Party 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 Obligated Party within the meaning of San Francisco Administrative Code Chapter 12M, the Obligated Party shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services pursuant to this Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of its services, the Obligated Party may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to the Obligated Party, or the Obligated Party collects such information on City's behalf, such information must be held by such Obligated Party in confidence and used only in performing the Agreement. The Obligated Party 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 Obligated Party agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. The Obligated Party is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

The requirements of Article 142 shall only apply to the Obligated Party'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. Article 142 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. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

14. Conflict of Interest. By executing this Agreement, the Obligated Party 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 City if it becomes aware of any such fact during the term of this Agreement.

15. Food Service Waste Reduction Requirements. The Obligated Party 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 remedies for noncompliance provided therein.

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

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

18. Prevailing Wages. Services to be performed by the Obligated Party under this Agreement may involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, or San Francisco Administrative Code Chapter 102 (collectively, "Covered Services"), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by the Obligated Party.

19. Assignment. The Services to be performed by the Obligated Party are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

20. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and each of the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

No Fee Recording (Pursuant to  
Government Code Section 27383)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Vanessa Legbandt, Esq.  
Stradling Yocca Carlson & Rauth LLP  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

---

APN: Block 3777, Lot 052  
160 Freelon Street, San Francisco, California 94107

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

160 FREELON HOUSING PARTNERS, L.P.,  
a California limited partnership

Dated as of June 1, 2025

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-2 (Taxable)



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## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this “Regulatory Agreement”) is made and entered into as of June 1, 2025, by and between the City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties and obligations, the “City”), acting by and through the Mayor’s Office of Housing and Community Development, and 160 Freelon Housing Partners, L.P., a California limited partnership (together with any permitted successors or assigns, the “Owner”), owner of a leasehold interest in the land described in Exhibit A attached hereto.

### RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as now in effect and as may be amended and supplemented (collectively, the “Act”), the City is authorized to issue revenue bonds, notes and other evidences of indebtedness to finance the acquisition, construction, and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the execution and delivery of multifamily mortgage revenue notes under the Act in connection with the acquisition, construction, development and equipping of an affordable multifamily residential rental housing development consisting of a total of eighty-five (85) residential rental apartment units (which include one (1) manager’s unit) and related fixtures, equipment, furnishings and site improvements, known collectively as “160 Freelon,” located in the City (the “Project”), as further described herein, which shall be subject to the terms and provisions hereof; and

C. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City is entering into a Funding Loan Agreement (the “Funding Loan Agreement”) with Bank of America, N.A., a national banking association, in its capacity as initial funding lender (“Initial Funding Lender” and together with any additional funding lender, the “Funding Lender”), and the Fiscal Agent (defined herein), pursuant to which the Funding Lender (i) will advance funds (the “Funding Loan”) to or for the account of the City, and (ii) the City will apply the proceeds of the Funding Loan to make one or more loans (collectively, the “Borrower Loan”) to the Owner to finance the construction and development of the Project; and

D. WHEREAS, in furtherance of the purposes of the Act and as a part of the City’s plan of financing affordable housing, and to evidence its obligation to make the payments due to the Funding Lender under the Funding Loan, the City is executing and delivering to the Funding Lender its revenue notes designated “City and County of San Francisco, California, Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1” (the “Tax-Exempt Note”), and “City and County of San Francisco, California, Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable)” (the “Taxable Note” and, together with the Tax-Exempt Note, the “Notes” and each, a “Note”), pursuant to the Issuance Resolution (defined herein); and

E. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City, the Fiscal Agent and the Owner will enter into a Borrower Loan Agreement dated as of the date hereof (the “Borrower Loan Agreement”), whereby the City will make the Borrower Loan to the Owner and the Owner agrees to make loan payments to the City in an amount which will be sufficient to enable the City to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

F. WHEREAS, the City hereby certifies that all things necessary to make the Notes, when executed and delivered as provided in the Issuance Resolution and the Funding Loan Agreement, the valid, binding and limited obligations of the City have been done and performed, and the execution and delivery of the Notes, subject to the terms thereof, in all respects have been duly authorized; and

G. WHEREAS, the Code (as defined herein) and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be constructed, equipped, used and operated in accordance with the Code and the Act, the City and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the construction and operation of the Project.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the City and the Owner agree as follows:

1. Definitions and Interpretation. Capitalized terms used herein have the meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

“Act” has the meaning set forth in Recital A of this Regulatory Agreement.

“Adjusted Income” – The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the Housing Act, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

“Affiliated Party” – (a) a Person whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) a Person who together with the Owner are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein), (c) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (d) an S corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Annual Monitoring Report” has the meaning set forth in Section 5(l) of this Regulatory Agreement.

“Area” – The HUD Metro Fair Market Rent Area (HMFA), or the successor area determined by HUD in which the Project is located.

“Authorized Owner Representative” – Any person who at the time and from time to time may be designated as such by written certificate furnished to the City and the Fiscal Agent containing the specimen signature of such person and signed on behalf of the Owner by the General Partner(s) of the Owner, which certificate may designate an alternate or alternates.

“Available Units” – Residential units in the Project (except for not more than one unit set aside for a resident manager) that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is constructed or (ii) the date of the execution and delivery of the Notes is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the completion of the renovations.

“Borrower Loan” has the meaning set forth in Recital C of this Regulatory Agreement.

“Borrower Loan Agreement” has the meaning set forth in Recital E of this Regulatory Agreement.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Requirements” – The requirements described in Section 26 of this Regulatory Agreement.

“CDLAC Resolution” – The resolution described in Section 26 of this Regulatory Agreement.

“Certificate of Continuing Program Compliance” – The Certificate with respect to the Project to be filed by the Owner with the City and the Program Administrator, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit D, or such other form as is provided by the City and executed by an Authorized Owner Representative.

“Certificate of Preference” – A residential Certificate of Preference issued by the City pursuant to the City’s Certificate of Preference Program, as further described in the Operational Rules attached hereto as Exhibit I.

“City” has the meaning set forth in the introductory paragraph of this Regulatory Agreement.

“City Median Income” – The “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and Community Development and published annually, based on the

unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being adjusted for household size but unadjusted for high housing costs.

“Closing Date” – The date of the execution and delivery of the Notes, being on or about June [10], 2025.

“CNA” means a 20-year capital needs assessment or analysis of replacement reserve requirements, as further described in the CNA Policy.

“CNA Policy” means MOHCD’s Policy for Capital Needs Assessment dated November 5, 2013, as it may be amended from time to time.

“Code” – The Internal Revenue Code of 1986, as in effect on the date of execution and delivery of the Notes or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of the execution and delivery of the Notes, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Completion Certificate” – The certificate of completion of the construction of the Project required to be executed by an Authorized Owner Representative and delivered to the City and the Funding Lender by the Owner pursuant to Section 2(e) of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

“Completion Date” – The date of completion of the construction of the Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

“Costs of Issuance” – The issuance costs for purposes of Section 147(g) of the Code incurred with respect to the issuance of the Tax-Exempt Note (as further defined in the Funding Loan Agreement) but does not include fees charged by the City with respect thereto (i.e., the issuance fee and the annual fee). In the event of a conflict between this definition and the requirements of the Tax Certificate, the Tax Certificate shall control.

“CTCAC” – The California Tax Credit Allocation Committee.

“Development Budget” – The development budget delivered by the Owner to MOHCD pursuant to the Amended and Restated Loan Agreement, dated as of [\_\_\_\_\_], between the City, acting through MOHCD, and the Owner, with respect to the Gap Loan.

“Facilities” – The multifamily buildings, structures and other improvements on the Site to be constructed, improved, rehabilitated and equipped, and all fixtures and other property owned by the Owner and located on the Site, or used in connection with, such buildings, structures and other improvements.

“Fiscal Agent” – U.S. Bank Trust Company, National Association, and its successors and assigns.

“Funding Lender” has the meaning set forth in Recital C of this Regulatory Agreement.

“Funding Loan” has the meaning set forth in Recital C of this Regulatory Agreement.

“Funding Loan Agreement” has the meaning set forth in Recital C of this Regulatory Agreement.

“Gap Loan” – Collectively, the loans from the City, acting through MOHCD, to the Owner and evidenced by the Amended and Restated Loan Agreement, dated as of [\_\_\_\_\_], by and between the City, acting through MOHCD, and the Owner relating to the Project.

“General Partners” – Related/160 Freelon Development Co., LLC, a California limited liability company, SFHDC 160 Freelon LLC, a California limited liability company, and/or any other Person that the partners of Owner, with the prior written approval of City, and the Funding Lender (to the extent required pursuant to the Borrower Loan Documents (as defined in the Funding Loan Agreement), have selected to be a general partner of Owner, and any successor general partner of the Owner, in each case to the extent permitted under the Borrower Loan Documents and hereunder.

“Ground Lease” – The Ground Lease, dated as of [\_\_\_\_\_], by and between the City, acting by and through its Real Estate Division and MOHCD, as the lessor, and the Owner, as lessee, pursuant to which the City is leasing the Site to the Owner.

“HAP Contract” – The Section 8 Project Based Voucher Program – PBV Housing Assistance Payment Contract between the Owner and the Housing Authority relating to the Project.

“Housing Act” – 42 U.S.C. Section 1437, known as the United States Housing Act of 1937, as amended.

“Housing Authority” – The Housing Authority of the City and County of San Francisco and any of its successors.

“Housing Law” – Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HUD” – The United States Department of Housing and Urban Development, its successors and assigns.

“Income Certification Form” – A fully completed and executed Income Certification Form substantially in the form designated in Exhibit B, or such other form as may be provided by the City.

“Investor Limited Partner” – Collectively, Bank of America, N.A., a national banking association, and any successor or assignee that has been admitted as an investor limited partner of the Owner in accordance with the Partnership Agreement.

“Issuance Resolution” – The resolution adopted by the Board of Supervisors of the City on [\_\_\_\_], 2025, and approved by the Mayor on [\_\_\_\_], 2025, approving the issuance of the Notes to finance a portion of the Project.

“Life of the Project” – The period of time from completion of the Project and initial occupancy and thereafter for so long as the Project continues to operate as a multi-family residential project in accordance with the terms hereof.

“Loan Documents” – The Funding Loan Agreement and the Borrower Loan Documents as defined in the Funding Loan Agreement.

“LOSP” – Local Operating Subsidy Program.

“Low-Income Tenant” – Any Tenant whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code or who fail to be described in Section 42(i)(3)(D) of the Code, such occupants shall not qualify as Low-Income Tenants. The determination of a Tenant’s status as a Low-Income Tenant shall initially be made by the Owner on the basis of the Income Certification Form executed by the Tenant upon such Tenant’s occupancy of a Restricted Unit in the Project and upon annual recertification thereafter. In determining if any Tenant is a Low-Income Tenant for purposes of any requirement of the City hereunder, the maximum Adjusted Income shall be based on the applicable percentage of the Median Income for the Area.

“Low-Income Unit” – A dwelling unit in the Project required to be rented to, or designated for occupancy by, Low-Income Tenants pursuant to Section 4 of this Regulatory Agreement.

“Median Income for the Area” – The median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009(a) of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat 2654) or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size and high housing cost area.

“MOHCD” – The City’s Mayor’s Office of Housing and Community Development.

“Note” or “Notes” has the meaning set forth in Recital D of this Regulatory Agreement.

“Operational Rules” – The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities that are referenced in Exhibit I and incorporated herein.

“Other City Restrictions” – The Declaration of Restrictions and Affordable Housing Covenants, dated as of [\_\_\_\_], related to the Project and the Gap Loan, executed by the Owner and any development and disposition agreement or any other development agreement associated with the Project.

“Owner” has the definition given to it in the introductory paragraph of this Regulatory Agreement.



["Partnership Agreement" – The Amended and Restated Agreement of Limited Partnership relating to Owner, by and among the General Partners, the Investor Limited Partner, the special limited partner and the withdrawing limited partner.]

"Permitted Encumbrances" has the definition given to it in the Security Instrument.

"Person" – Any individual, for-profit or not for profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Program Administrator" – A governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on multifamily housing projects financed with bonds or notes, which shall be the City initially and, at the City's election, any other person or entity appointed by the City who shall enter into an administration agreement in a form acceptable to the City.

"Project" has the meaning set forth in Recital B of this Regulatory Agreement, including the Facilities and the Site.

"Project Costs" – To the extent authorized by the Code, the Regulations and the Act, any and all costs, fees and expenses incurred by the Owner associated with the construction and equipping of the Project for use as affordable rental housing, including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, payment of capitalized interest, payment of certain costs and expenses incidental to the issuance of the Notes and payment of any other costs shown on the Development Budget.

"Qualified Project Costs" – The Project Costs paid with respect to the Facilities that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Owner or but for a proper election by the Owner to deduct such costs) in accordance with general Federal income tax principles and in accordance with Regulations §1.103-8(a)(1), provided, however, that only such portion of interest accrued during rehabilitation or construction of the Facilities (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided further that interest accruing after the date of completion of the construction or rehabilitation of the Facilities shall not be a Qualified Project Cost; and provided still further that if any portion of the Facilities is being constructed or rehabilitated by an Affiliated Party or persons or entities treated as related to the Owner within the meaning of Sections 1504, 267 and 707 of the Code (whether as a general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out-of-pocket costs incurred by such Affiliated Party in constructing or rehabilitating the Facilities (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (C) any overhead expenses incurred by the Affiliated Party, which are directly attributable to the work performed on the Facilities, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Facilities or

payments received by such Affiliated Party due to early completion of the Facilities (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to the date of a declaration of “official intent” to reimburse costs paid with respect to the Facilities (within the meaning of §1.150-2 of the United States Treasury Regulations) or the date of issue of the Tax-Exempt Note, and (iv) if the Project Costs were previously paid and are to be reimbursed with proceeds of the Tax-Exempt Note, such costs were (A) costs of issuance of the Tax-Exempt Note, (B) preliminary capital expenditures (within the meaning of Regulations §1.150-2(f)(2)) with respect to the Facilities (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Facilities that do not exceed twenty percent (20%) of the issue price of the Tax-Exempt Note (as defined in Regulations §1.148-1), or (C) capital expenditures with respect to the Facilities that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the construction or rehabilitation of the Facilities is placed in service (but no later than three (3) years after the expenditure is paid). Qualified Project Costs do not include Costs of Issuance. In the event of any conflict between this definition and the requirements of the Tax Certificate, the Tax Certificate shall control.

“Qualified Project Period” – The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the Project are first occupied, and ending on the later of the following:

(a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;

(b) the first date on which no Tax-Exempt private activity bonds or notes with respect to the Project are outstanding;

(c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates;

(d) the date that is the later of (i) seventy-five (75) years after the Closing Date or (ii) the end of the Life of the Project; provided, however, that if the Life of the Project is less than seventy-five (75) years due to casualty, then the end date of the Life of the Project controls; or

(e) such later date, if any, as may be provided in Section 5, Section 6 or Section 26 hereof.

“Qualified Tenant” – A Low-Income Tenant or a Very Low-Income Tenant.

“Regulations” – The income tax regulations promulgated by the Internal Revenue Service or the United States Department of the Treasury pursuant to the Code from time to time.

“Regulatory Agreement” – This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments hereto or supplements hereof.

“Restricted Unit” – A Low-Income Unit.

“Section 8” – Section 1437f of the Housing Act, unless explicitly referring to a section of this Regulatory Agreement (e.g., “Section 8 hereof”).

“Security Instrument” – The Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of [\_\_\_\_\_], executed by Owner in favor of the City, and assigned to the Fiscal Agent in trust for the benefit of the Funding Lender to secure the Funding Loan, encumbering the Project.

“Site” – The parcel or parcels of real property leased to the Owner by the City and described in Exhibit A, which is attached hereto, and all rights and appurtenances thereto.

“SSI” – Supplemental Security Income administered pursuant to P.L. 74-271, approved August 14, 1935, 49 Stat. 620, as now in effect and as it may from time to time hereafter be amended or supplemented.

“State” – The State of California.

“TANF” – The Temporary Assistance for Needy Families program administered pursuant to 42 U.S.C. Sections 601-687.

“Taxable Note” has the meaning set forth in Recital D of this Regulatory Agreement.

“Tax Certificate” – [The Tax Certificate, dated the Closing Date, executed and delivered by the City, and the Borrower’s Use of Proceeds Certificate, dated the Closing Date, executed and delivered by the Owner.]

“Tax Counsel” – An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the City and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Tax-Exempt” – With respect to the status of interest on the Tax-Exempt Note, the exclusion of interest thereon from gross income of the holder of the Tax-Exempt Note for federal income tax purposes pursuant to Section 103(a) of the Code (other than interest on any portion of the Tax-Exempt Note owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code).

“Tax-Exempt Note” has the meaning set forth in Recital D of this Regulatory Agreement.

“Tenant” – At any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

“Very Low-Income Tenant” means any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code or who fail to be described in Section 42(i)(3)(D) of the Code, such occupants shall not qualify as Very Low-Income Tenants. The determination of

a Tenant's status as a Very Low-Income Tenant shall initially be made by the Owner on the basis of the Income Certification Form executed by the Tenant upon such Tenant's occupancy of a Restricted Unit in the Project and upon annual recertification thereafter. In determining if any Tenant is a Very Low-Income Tenant for purposes of any requirement of the City hereunder, the maximum Adjusted Income shall be based on the applicable percentage of the Median Income for the Area.

"Very Low-Income Unit" – A dwelling unit in the Project required to be rented to, or designated for occupancy by, Very Low-Income Tenants pursuant to Section 4 of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender used in this Regulatory Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

2. Construction of the Project. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Owner has incurred, or will incur within six (6) months after the Closing Date, a substantial binding obligation to a third party to commence the construction of the Project, pursuant to which the Owner is or will be obligated to expend at least five percent (5%) of the aggregate principal amount of the Tax-Exempt Note for the payment of Qualified Project Costs.

(b) The Owner's reasonable expectations respecting the total cost of the construction of the Project and the disbursement of proceeds of the Tax-Exempt Note are accurately set forth in the Tax Certificate, which has been delivered to the City on the Closing Date.

(c) The Owner will proceed with due diligence to complete the construction of the Project and expects to expend the maximum authorized amount of the Borrower Loan for Project Costs within three (3) years of the Closing Date.

(d) The Owner shall prepare and submit to the City a final allocation of the proceeds of the Tax-Exempt Note to the payment of Qualified Project Costs, which allocation shall be consistent with the cost certification (as defined in the Partnership Agreement) within sixty (60) days after the Completion Date, but in any event no later than the earlier of (1) eighteen (18)

months from the placed in service date for the Project, (2) the Maturity Date (as defined in the Funding Loan Agreement) with respect to the Funding Loan or (3) the fifth anniversary of the Closing Date.

(e) No later than five (5) days after the Completion Date, the Owner will submit to the City and the Funding Lender a duly executed and completed Completion Certificate.

(f) On the date on which fifty percent (50%) of the units in the Project are first rented, the Owner will submit to the City and the Funding Lender a duly executed and completed Certificate as to Commencement of Qualified Project Period, in the form of Exhibit E attached hereto.

(g) Money on deposit in any fund or account in connection with the Tax-Exempt Note, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owner in a manner which would cause the Tax-Exempt Note to be an “arbitrage bond” within the meaning of Section 148 of the Code, and the Owner specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Tax-Exempt Note from being an “arbitrage bond” under the Code.

(h) The Owner (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take any action if such action or omission would in any way cause the proceeds from the sale of the Tax-Exempt Note to be applied in a manner contrary to the requirements of the Funding Loan Agreement, the Borrower Loan Agreement or this Regulatory Agreement.

(i) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Tax-Exempt Note, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Tax-Exempt Note, will result in not less than ninety-five percent (95%) of all disbursements of the proceeds of the Tax-Exempt Note having been used to pay or reimburse the Owner for Qualified Project Costs and less than twenty-five percent (25%) of all disbursements having been used to pay for the acquisition of land or any interest therein.

(j) The statements made in the various certificates to be delivered by the Owner to the City on the Closing Date in connection with the execution and delivery of the Notes will be true and correct.

(k) All of the amounts received by the Owner from the proceeds of the Tax-Exempt Note and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Tax-Exempt Note shall be used to pay Costs of Issuance of the Tax-Exempt Note.

(l) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt status of the interest on the Tax-Exempt Note, and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(m) The Owner will take such action or actions as may be necessary, in the written opinion of Tax Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the Tax-Exempt status of interest on the Tax-Exempt Note.

(n) No portion of the proceeds of the Tax-Exempt Note shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. No portion of the proceeds of the Tax-Exempt Note shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed of such office is not related to the day-to-day operations of the Project.

(o) In accordance with Section 147(b) of the Code, the average maturity of the Tax-Exempt Note does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities being financed by the Tax-Exempt Note.

3. Qualified Residential Rental Property. The Owner hereby acknowledges and agrees that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code). The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code and the Owner hereby elects and covenants to comply with Section 142(d)(1)(B) of the Code with respect to the Project. To that end, and for the term of this Regulatory Agreement, the Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being constructed for the purpose of providing multifamily residential rental property, including certain facilities related thereto, and the Owner shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the residential dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each residential dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (which may be a countertop cooking range), refrigerator and sink.

(c) None of the residential dwelling units in the Project will at any time be used on a transient basis (e.g., subject to leases that are less than thirty (30) days in duration) (including use as a corporate suite), or be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Tax Counsel that the Tax-Exempt status of the interest on the Tax-Exempt Note will not be adversely affected thereby.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required by (i) this Regulatory Agreement, (ii) the Gap Loan and the Other City Restrictions; (iii) the Ground Lease; (iv) any other regulatory or restrictive use agreement to which the Project is or becomes subject pursuant to Section 42 of the Code, (v) any additional tenant income and rent restrictions imposed by the City, (vi) any other federal, State or local governmental agencies that imposes any additional tenant income and rent restrictions, and (vii) any other legal or contractual requirement not excepted by clauses (i) through (vi) of this subsection, upon receipt by the Owner, the Funding Lender and the City of an opinion of Tax Counsel to the effect that compliance with such other requirement will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Note.

(f) The Site consists of a parcel or parcels that are contiguous and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property (including the portions of the common areas allocated to the Project), as evidenced by the ownership, management, accounting and operation of the Project.

(g) No residential dwelling unit in the Project shall be occupied by the Owner. Notwithstanding the foregoing, if any building in the Project contains five (5) or more residential dwelling units, this subsection shall not be construed to prohibit occupancy of residential dwelling units in such building by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

(h) The Owner shall not discriminate on the basis of race, creed, religion, color, sex, source of income (*e.g.*, TANF, Section 8 or SSI), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the construction, operation and management of the Project, except to the extent required hereby.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the City from enforcing the requirements of the Code and the Regulations, or condemnation or similar event, the Owner covenants that, within a "reasonable period" determined in accordance with the Regulations, it will

either prepay the Tax-Exempt Note or, if permitted under the provisions of the Security Instrument and the Funding Loan Agreement, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the Regulations.

(j) The Owner agrees to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof such that the Project shall be in substantially the same condition at all times as the condition it is in at the time of the completion of the construction of the Project with the proceeds of the Tax-Exempt Note. Notwithstanding the foregoing, the Owner's obligation to repair or rebuild the Project in the event of casualty or condemnation shall be subject to the terms of the Borrower Loan Agreement and the Security Instrument.

(k) The Project will have and continue to have eighty-five (85) residential dwelling units, one (1) of which will be a manager's unit.

(l) The Owner will not sell dwelling units within the Project.

4. Restricted Units. The Owner hereby represents, as of the date hereof, and warrants, covenants and agrees with respect to the Project as follows:

(a) Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, the Owner with respect to the Project shall comply with the income and rent restrictions of this Section 4(a), and any conflict or overlap between any two (2) or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restriction.

(i) Low-Income Units. All eighty-four (84) of the Available Units in the Project shall be rented to and continuously occupied by households who qualify as Low-Income Tenants. The monthly rent charged for all the Low-Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area, less the utility allowance, provided however that the monthly rent charged for the Low-Income Units receiving the Section 8 subsidy or LOSP subsidy shall be as determined in accordance with the HAP Contract or the LOSP contract, as applicable.

(ii) Additional City Restrictions. In addition to the above paragraph (a)(i), all Restricted Units shall at all times be occupied, or held vacant and available for rental, as required by the Other City Restrictions, except where otherwise expressly restricted or prohibited by any CDLAC Requirements.

(iii) Income Restrictions Pursuant to Requirements of the City and the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project or thirty-four (34) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Low-Income Tenants.



(iv) Income and Rent Restrictions Pursuant to Requirements of the City and the Housing Law. Pursuant to the requirements of the City and Section 52080(a)(1)(B) of the Housing Law, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project, or thirty-four (34) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Low-Income Tenants. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed (a) one-twelfth ( $1/12^{\text{th}}$ ) of the amount obtained by multiplying thirty percent (30%) times sixty percent (60%) of the Median Income for the Area (excluding any supplemental rental assistance from the State, the Federal government, or any other public agency to those occupants or on behalf of those units), (b) less the utility allowance.

(v) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive than any of the foregoing requirements, the Owner shall comply with the CDLAC Requirements.

(vi) Income and Rent Restrictions in Event of Loss of Subsidy. If any LOSP subsidy related to the Project is terminated, discontinued, or substantially reduced at no fault of the Owner, the occupancy and rent restrictions set forth in Subsection 4(a)(i) may be altered, but only to the minimum extent required for the financial feasibility of the Project, as determined by the City in its reasonable discretion in accordance with substantially similar underwriting criteria used by the City to evaluate the Project's financial feasibility prior to the Closing Date, provided that:

(A) The Owner first obtains and delivers to the Fiscal Agent and the City an opinion of Tax Counsel, acceptable to the City in its sole discretion, to the effect that such alteration would not adversely affect any exclusion of interest on the Tax-Exempt Note from gross income for federal tax purposes or violate the terms and conditions of the CDLAC Resolution, as applicable.

(B) To the extent financially feasible, as mutually determined by the parties, any rent increase will be limited to (or will be first implemented with) any vacant units.

(C) The Owner diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(D) One hundred percent (100%) of the units formerly under the LOSP must at all times be occupied by Qualified Tenants whose incomes do not exceed sixty percent (60%) of Median Income for the Area and the monthly rent paid by the Qualified Tenants may not exceed (i) thirty percent (30%) of [sixty percent (60%)] of Median Income for the Area, adjusted for household size, (ii) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Available Units in the Project may not exceed sixty percent (60%) of Median Income for the Area and will be subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance.

(E) If the Project continues to demonstrate financial infeasibility after the rent alterations above, to the extent financially feasible as determined in the City's reasonable discretion, the City will waive the average income restriction of sixty percent (60%) of Median Income for the Area for all Available Units, and increase rents to the extent necessary for the Project to remain financially feasible (not past TCAC maximums); provided that one hundred percent (100%) of the Available Units must at all times be occupied by tenants whose Adjusted Income does not exceed eighty percent (80%) of the area median income, as published by TCAC (the "TCAC Median Income"), and the monthly rent paid by the tenants may not exceed (a) thirty percent (30%) of eighty percent (80%) of TCAC Median Income (b) less utility allowance. On an annual basis, the Owner will convert to the TCAC Median Income and maximum rent to the corresponding published MOHCD maximum income level and maximum rent level, respectively, and provide MOHCD with supporting documentation. The maximum initial occupancy income level restrictions when averaged for all Available Units in the Project may not exceed sixty percent (60%) of TCAC Median Income and will be subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance.

In such event, the City will use good faith efforts to meet with the Owner, within fifteen (15) business days after the Owner's written request to meet, in order to determine the amount of any rent increase. The relief provided by this Subsection 4(a)(vi) will not be construed as authorizing the Owner to exceed any income or rent restrictions imposed on the Project by CDLAC, CTCAC, or the Other City Restrictions, or under any other agreement. The Owner represents and warrants that it will have obtained any necessary approvals or relief from any other applicable income and rent limitations (including without limitation the Other City Restrictions prior to implementing the relief provided by this Subsection 4(a)(vi).

(vii) Restricted Units. Because all of the units in the Project, excluding the one (1) manager's unit, are required to be Restricted Units pursuant to Section 4(a) hereof, any Available Unit must be rented to or held vacant for a Low-Income Tenant, subject to any adjustments allowed under this Section 4.

(viii) For the avoidance of doubt, the requirements of any subparagraph of this Section 4(a) shall not be construed to replace, obviate, diminish or abrogate any other applicable legal or contractual requirement, including the other requirements of this Section 4, the Other City Restrictions, the requirements of any other governmental authority, or the requirements of any applicable ordinance, regulation, law or court order; provided, however, it is expressly agreed that the requirements of any subparagraph of this Section 4(a) may be satisfied simultaneously with any or all of the aforesaid other requirements, such that the satisfaction of a more restrictive requirement shall be deemed to satisfy simultaneously any less restrictive requirement of the same subject.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant who satisfies the applicable income limit for a Restricted Unit upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

(c) Income Certifications. The Owner will obtain, complete and maintain on file Income Certification Forms for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, in each case in the form attached hereto as Exhibit B, together with such information, documentation and certifications as are required therein or by the City, in its discretion, to substantiate the Tenant's income. In addition, the Owner will provide such further information as may be required in the future by the State, CDLAC, the City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Regulations, as the same may be amended from time to time, and in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Fiscal Agent) an executed Certificate of Continuing Program Compliance (in the form of that which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Notes or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations (Division 9.5 of Title 4 of the California Code of Regulations).

(e) Recordkeeping. The Owner will maintain complete and accurate records pertaining to the Restricted Units, and will permit any duly authorized representative of the City, the Program Administrator (if other than the City), the Fiscal Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the Project upon reasonable notice during normal business hours, including those records pertaining to the occupancy of the Restricted Units, but specifically excluding any material which may be legally privileged.

(f) Annual Certification to Secretary of Treasury. The Owner shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Fiscal Agent. Failure to comply with the provisions of this Subsection will subject the Owner to penalty, as provided in Section 6652(j) of the Code.

(g) Lease Provisions Regarding Income Certification Reliance. All leases pertaining to Restricted Units do and shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (i) certifies the accuracy of the statements made in the Income Certification Form, (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Owner or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification Form or refusal to comply with a request for information with respect

thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (iii) acknowledges that the Owner has relied on the Income Certification Form and supporting information supplied by the Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement; and (iv) agrees that the Tenant's income is subject to annual certification in accordance with Subsection 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Subsection 4(c) above may provide grounds for termination of the lease.

(h) Maintenance of Tenant Lists and Applications. All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business which is unrelated to the Project and shall be maintained, as required from time to time by the Program Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination during normal business hours by representatives of the City or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the City or the Fiscal Agent shall be a default hereunder.

(i) Tenant Lease Subordination. All tenant leases or rental agreements shall be subordinate to this Regulatory Agreement.

(j) No Encumbrance, Demolition or Non-Rental Residential Use. The Owner shall not take any of the following actions:

(i) Except for the Permitted Encumbrances or as otherwise previously approved by the City, encumber any portion of the Project or grant commercial leases or subleases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (a) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (b) upon receipt by the Owner, the Fiscal Agent and the City of an opinion of Tax Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Note, or (c) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement;

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project (other than in the ordinary course of business); or

(iii) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(k) Compliance with Regulatory Agreement. The Owner shall exercise reasonable diligence to comply, or cause compliance, with the requirements of this Regulatory Agreement and shall notify the City within fifteen (15) days and correct any noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, unless such noncompliance is not reasonably susceptible to correction within sixty (60) days and, in the opinion of Tax Counsel acceptable to the City, in its sole discretion, such noncompliance would not have an adverse effect on any exclusion of interest on the Tax-Exempt Note from gross income for federal income tax purposes,

in which event the Owner shall have such additional time as the City determines to be reasonably necessary to effect such correction provided the Owner has commenced such correction after discovery, is diligently prosecuting such correction and is keeping the City updated on the progress.

5. Additional Requirements of the City.

(a) Minimum Lease Term. The term of the lease for any Restricted Unit shall not be less than one (1) year.

(b) Limitation on Rent Increases. Annual rent increases on a Restricted Unit shall be limited to the percentage of the annual increase in the lower of City Median Income or Median Income for the Area, as applicable. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year. Notwithstanding the foregoing, any Restricted Unit that benefits from a Section 8 rental subsidy shall not be subject to the limitations set forth in this Section 5(b), but rather shall be subject to the restrictions established by the San Francisco Housing Authority.

(c) Appointment of Program Administrator. The Owner acknowledges that the City may appoint a Program Administrator (other than the City), at the sole cost and expense of the City, to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. In such event, the Owner shall comply with any reasonable request by the City and the Program Administrator to deliver to any such Program Administrator, in addition to or instead of the City, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection during normal business hours with reasonable notice by the Program Administrator as an agent of the City. The City may change the Program Administrator at its sole and exclusive discretion. The Owner shall have the right to rely on any consent or direction given by the Program Administrator on the same basis as if given by the City.

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than RA Management, LLC, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owner shall comply with the City's Certificate of Preference Program pursuant to San Francisco Administrative Code Section 24.8 and the Operational Rules referenced in Exhibit I, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Sections 42 and 142(d) of the Code, the Act, the Gap Loan, the CDLAC Resolution, CTCAC requirements or other applicable Federal or State law.

(f) Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owner shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar federal, State or local governmental assistance program. The Owner shall not apply selection criteria to Section 8

certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owner shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed two (2) persons for a studio unit; three (3) persons for a one-bedroom unit; five (5) persons for a two-bedroom unit and seven (7) persons for a three-bedroom unit. The Owner shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all Tenants. The Owner shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owner shall not discriminate against Tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI). Further, Owner shall comply with all notice provisions set forth in the Housing Act prior to terminating any lease to which any Tenant is a party. The Owner acknowledges that (i) federal notice requirements under the Housing Act are distinct from those under State law or City law and the Owner shall comply with all Federal, State and local laws in connection with any such notice requirements, and (ii) compliance with the law of one jurisdiction shall not be deemed compliance with the laws of all jurisdictions.

(g) Income Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Subsection 6(f), the parties agree, from and after the expiration of the Qualified Project Period, (i) that Subsection 6(f)(i) shall not apply and (ii) that units reserved for occupancy as required by Subsection 4(a)(iv) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iv), and such expiration or termination shall not be the cause for termination of a Tenant's tenancy in a Restricted Unit, except as expressly provided in Subsection 6(f)(ii), Subsection 6(f)(iii) (except that the reference to 30 years shall be seventy-five (75) years), and Subsection 6(f)(iv).

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to Section 142(d) of the Code or the Act are voluntarily agreed to by the Owner in consideration of financial assistance from the City and an allocation of private activity bond volume cap from CDLAC.

(i) Amendment or Waiver by City; Conflicting Provisions. The requirements of Subsection 4(a)(i) and of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner, or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Fiscal Agent have received an opinion of Tax Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the Tax-Exempt status of interest on the Tax-Exempt Note. Any requirement of Subsection 4(a)(i) or Section 5 shall be void and of no force and effect if the City, the Fiscal Agent and the Owner receive a written opinion of Tax Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

(j) Extension of Qualified Project Period. Notwithstanding any other provision herein, the Qualified Project Period shall not expire earlier than, and the requirements of this Section 5 shall be in effect until the date that is the later of (i) seventy-five (75) years from the

Closing Date or (ii) the end of the Life of the Project, provided, however, that if the Life of the Project is less than 75 years due to casualty, then the term of the Life of the Project controls; provided that certain provisions of this Section 5 shall survive and remain in full force and effect following the end of the Qualified Project Period, as specified in Section 11 hereof.

(k) Marketing and Tenant Selection Plan. Owner will market the Restricted Units in accordance with the Marketing and Tenant Selection Plan approved by the City, which shall be substantially in the form referred to in Exhibit J, as may be updated by the City from time to time.

(l) Annual Reporting. Owner must file with the City annual reports (the “Annual Monitoring Report”) no later than one hundred twenty (120) days after the end of Owner’s fiscal year. The Annual Monitoring Report must be in substantially the form referenced in Exhibit H, as may be updated by the City from time to time. Thereafter and for the remainder of the Life of the Project, the Owner shall maintain sufficient records of the information generally requested in the Annual Monitoring Report.

(m) Capital Needs Assessment. Owner must file with the City a CNA every five (5) years, with the initial CNA due 5 years from the Completion Date. The CNA must be in the form referenced in Exhibit H, as may be updated or revised by the City from time to time.

6. Additional Requirements of State Law. In addition to the requirements set forth herein, pursuant to Section 52080 of the Housing Law, the Owner hereby agrees that it shall also comply with each of the following requirements, in each case, for the Term of this Regulatory Agreement, including the following:

(a) Tenants Under Section 8 of the Housing Act. The Owner shall accept as Tenants, on the same basis as all other prospective Tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(b) Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times by Qualified Tenants.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

(d) Recordation of Regulatory Agreement. This Regulatory Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the name of the Owner as grantor and to the name of the City as grantee.

(e) Restricted Income Units of Comparable Quality. The Restricted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project. Notwithstanding the foregoing, the parties agree that this Section 6(e) shall have no practical effect

because one hundred percent (100%) of the units in the Project (except the one manager's unit) are required to be Restricted Units pursuant to Section 4(a).

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the Notes, assignment of the leasehold interest in the Project in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(iv) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iv), until the earliest of (i) the household's income exceeds one hundred forty percent (140%) of the maximum eligible income specified therein (except as otherwise specified in Subsection 5(g)), (ii) the household voluntarily moves or is evicted for good cause, as defined in the Housing Law, (iii) thirty (30) years after the date of the commencement of the Qualified Project Period (except as otherwise specified in Subsection 5(g)), and (iv) the Owner pays the relocation assistance and benefits to households if required by, and as provided in, Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the expiration of the Qualified Project Period, the Owner shall continue to make available to Qualified Tenants Restricted Units that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households. Nothing in this Subsection 6(g) or Subsection 6(f) shall be interpreted to require the City to monitor Owner's compliance herewith or with Subsection 6(f).

(h) Notice and Other Requirements. The Owner shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof, and shall comply with all applicable requirements of Section 65863.11 of the California Government Code.

(i) Syndication of the Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Partnership Agreement. Any subsequent syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Partnership Agreement will not be amended, modified or supplemented in connection with such syndication except to reflect such transfer of limited partnership interests and other non-material corrections or adjustments related to such transfer; provided, however, that the Owner shall provide to the City, at least five (5) business days prior to the effective date of any such syndication, written notice of such subsequent syndication certifying that no other amendment, modification or supplement to the Partnership Agreement will be effected in connection with such syndication except to the limited extent necessary to reflect such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents; provided, further, that any such subsequent syndication of tax credits with respect to the Project must comply with said Section 52080(e). Any other syndication of the Project shall be subject to the prior written approval of the Director of MOHCD, which approval shall be granted only after the City determines that the terms and conditions of such syndication (i) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents



executed pursuant to the Act, (ii) shall not cause any of the requirements of the City set forth in this Section 6 to be subordinated to the syndication agreement, and (iii) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

7. Indemnification. The Owner hereby releases the City (which includes MOHCD), the Fiscal Agent and the Funding Lender and their respective officers, members, directors, officials and employees from, and covenants and agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend the City, the Fiscal Agent, the Funding Lender and the officers, members, directors, officials, agents and employees of each of them (collectively, the “Indemnified Parties,” and each an “Indemnified Party”) from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys’ fees and expenses, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Borrower Loan or the Notes, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Borrower Loan, the Funding Loan or otherwise, including without limitation, any advances of the Borrower Loan or Funding Loan or any failure of the Funding Lender to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Borrower Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any note or bond, including any secondary market transaction with respect thereto, or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Borrower Loan Agreement, the Funding Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation and management of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the City, the Funding Lender or the Fiscal Agent of their powers or duties under the Borrower Loan Agreement, the Funding Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party or assignee; provided, however, that this provision shall not require the Owner to indemnify (i) the Funding Lender from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Funding Lender or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel selected by the Indemnified Party (which may include the City Attorney of the City); and the Owner shall assume the payment of all reasonable fees and expenses related thereto (provided however that if the Indemnified Party is the City, the selection of the counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all attorneys’ fees and expenses related thereto), with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding

the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest on the Funding Loan or Borrower Loan, which is not otherwise set forth in the Funding Loan Agreement, the Borrower Loan Agreement, the Notes or any other agreement relating to the Notes.

Additionally, the Owner shall, to the fullest extent permitted by law, pay and discharge, and shall indemnify and hold harmless the City, the Funding Lender, and the Fiscal Agent from, (i) any lien or charge upon payments by the Owner to the City, the Funding Lender, and the Fiscal Agent hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City, the Funding Lender, or the Fiscal Agent shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party and the payments of all reasonable fees and expenses related thereto (provided that if the Indemnified Party is the City, the selection of counsel (which may be or include the City Attorney of the City) rests in the sole discretion of the City Attorney) and the Owner shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between the Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses (and in the case of the City, all such fees and expenses) of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 10 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 7 if such subsequent Owner fails to so indemnify the City, unless at the time of transfer the City has consented to the transfer to the extent such consent is required hereunder.

The provisions of this Section 7 shall survive the term of the Notes and this Regulatory Agreement, including the termination of this Regulatory Agreement pursuant to the second paragraph of Section 11 hereof and the earlier removal or resignation of the Fiscal Agent.

The obligations of the Owner under this Section are independent of any other contractual obligation of the Owner to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owner to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owner. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which they are entitled to indemnification.

In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

8. Consideration. The City has issued the Notes and made the Borrower Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of

inducing the Owner to construct, equip and operate the Project. In consideration of the making of the Borrower Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

9. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Notes, and in the Tax-Exempt status of the interest on the Tax-Exempt Note. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and the Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion

10. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project (except in accordance with the [Right of First Refusal Agreement or the Purchase Option Agreement] (each as defined in the Partnership Agreement), provided that any such transfer of ownership or other rights may be made only to an original party of the [Right of First Refusal Agreement or the Purchase Option Agreement] unless otherwise approved by the City in writing) and, except as otherwise provided herein, hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder and/or pursuant to the aforementioned [Right of First Refusal Agreement or Purchase Option Agreement], but only to an original party of either of such agreements [or permitted assignee of an original party thereunder] as provided above unless otherwise approved by the City in writing) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Borrower Loan Agreement or any document related to the Borrower Loan, and payment of all fees and expenses of the City and the Fiscal Agent due under any of such documents is current, and (v) an opinion of Tax Counsel to the effect that such transfer will not, in itself, cause interest on the Tax-Exempt Note to become includable in the gross income of the recipients thereof for federal income tax purposes except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall

cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 10 shall affect any provision of any other document or instrument between the Owner and any other party, which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than sixty (60) days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer and providing relevant information regarding the proposed transfer.

Notwithstanding the foregoing, the provisions of this Section 10 shall not apply to the granting of the Security Instrument (or the exercise of remedies thereunder following an uncured event of default, including any foreclosure, exercise of power of sale or assignment of leasehold interest under the Security Instrument) or transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner in the Owner (which is instead subject to paragraph (i) of Section 6), (b) the General Partner interest to an affiliate of the General Partner or Investor Limited Partner if the Investor Limited Partner has removed and replaced the General Partner for cause pursuant to the Partnership Agreement, or (c) the transfer of any non-managing member or limited partner interest in the Investor Limited Partner; provided however that such grant, exercise or transfer will not adversely affect the Tax-Exempt status of the interest on the Tax-Exempt Note or the exemption from State personal income taxation of the interest on the Notes. Notwithstanding the foregoing sentence, promptly upon the occurrence of any of such transfer, grant, or exercise of remedies under the Security Instrument (including, but not limited to a foreclosure), the transferee or subsequent owner shall provide to the City evidence satisfactory to the City that such transferee or new owner has acknowledged in writing, and in full, that the duties and obligations of the "Owner" under Sections 3, 4, 5 and 6 of this Regulatory Agreement and any provisions thereof relating to the enforcement of such provisions or remedies resulting from any breach thereof shall survive and continue to constitute an encumbrance on the Project.

11. Term. Subject to the following paragraph of this Section 11, Section 7 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect until the later of (a) the end of the Qualified Project Period or (b) seventy-five (75) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by events such as fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure, or condemnation or a similar event, but only if, in the case of the events described in either clause (i) or (ii) above within a reasonable period, either the Notes are paid in full or cancelled or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of an

assignment of the leasehold interest in the Project in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. For the avoidance of doubt, in the event the Funding Lender, its assignee or a related party thereof takes title to the Project, whether by foreclosure, exercise of power of sale, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure, or similar event, the preceding sentence does not require any such party to cause the Notes to be paid in full or cancelled; provided that this Regulatory Agreement shall not be terminated pursuant to this paragraph unless all the conditions set forth in this paragraph have been met. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by assignment of the leasehold interest in the Project in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City in the event of the occurrence of any of the events described herein above. Notwithstanding the preceding provisions of this Section, Owner, including without limitation, any successor to any Owner pursuant to an event set forth in clause (ii), above, of this paragraph, agrees that Sections 3, 4, 5 and 6 of this Regulatory Agreement (and any provisions relating to the enforcement of such provisions or remedies resulting from any breach thereof) shall survive the termination of this Regulatory Agreement pursuant to the preceding provisions of this paragraph and remain in full force and effect until the end of the Qualified Project Period.

Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received by the City an opinion of Tax Counsel that such termination will not adversely affect the Tax-Exempt status of the interest on the Tax-Exempt Note or the exemption from State personal income taxation of the interest on the Notes. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City in the event of the occurrence of any of the events described hereinabove.

Upon the expiration or termination of this Regulatory Agreement or certain terms hereof, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of said expired or terminated terms; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

12. Covenants to Run with the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the expiration or termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire except those terms which are expressly intended to survive expiration or termination. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the

provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

13. Burden and Benefit. The City and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The City and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low-Income Tenants and Very Low-Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Notes were issued.

14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Site.

15. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days (the "Cure Period") after written notice thereof shall have been given by the City to the Owner and the Investor Limited Partner (and a copy of such notice shall also be given to the Funding Lender and the Fiscal Agent, provided however that the failure of the City to provide such copy to the Funding Lender and the Fiscal Agent shall have no effect on the sufficiency of the notice to the Owner), the City may, as its sole option, extend the Cure Period (provided, however, that the City may at its sole option extend such period if the default is of the nature which would reasonably require more than 60 days to cure and if the Owner provides the City, if requested by the City, with an opinion of Tax Counsel to the effect that such extension will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Note). Upon the expiration of the Cure Period, as the same may be extended, then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Borrower Loan Agreement, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; or

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder, subject, however, to those limits on exercising remedies set forth, prior to the Conversion Date (as defined in the Funding Loan Agreement), in [Section 7.02] of the Borrower Loan Agreement, and following the Conversion Date, in [Section 2.2] of the Amended and Restated Borrower Loan Agreement to be entered into between the City and the Owner.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the occurrence of an event of default under this Regulatory Agreement shall not be deemed, under any

circumstances whatsoever, to be a default under the Security Instrument, except as may be otherwise specified in the Security Instrument.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

16. Recording and Filing. The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the City and County of San Francisco, California and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

17. Payment of Fees. The Owner shall pay to the City, or to the Fiscal Agent at the direction of the City, on each anniversary date of the Closing Date that occurs during the term of this Regulatory Agreement, an annual fee (the “Annual Fee”) equal to [(a) \_\_\_\_\_] of one percent (\_\_\_\_%) of the average outstanding aggregate principal amount of the Notes in the previous twelve (12) months (the “Maximum Annual Fee”), but no less than \$[\_\_\_\_\_] (the “Minimum Annual Fee”); provided, however, that (b) the Annual Fee, as calculated under clause (a) above, shall be lowered, from time to time, by a sum equal to (i) the amount, if any, by which the previous Annual Fee, prior to any adjustment under this clause (b), exceeded the Maximum Annual Fee allowable for such period, plus (ii) any amounts by which any other previous Annual Fees exceeded the respective Maximum Annual Fees, for which no subsequent Annual Fee had been lowered pursuant to this Section 17, all as calculated by the City’s financial advisor and confirmed prior to maturity of the Notes by a Rebate Analyst approved by the City. For purposes of the preceding sentence, the “average outstanding aggregate principal amount of the Notes in the previous twelve (12) months” shall be calculated by summing the actual outstanding aggregate principal amounts of the Notes as of the 14th day of each of the twelve (12) calendar months preceding the due date of the subject Annual Fee, and dividing such sum by twelve (12).]

Notwithstanding any prepayment of the Funding Loan or the Borrower Loan and notwithstanding a discharge of the Funding Loan Agreement and/or the Borrower Loan Agreement, the Owner shall continue to pay the City’s Annual Fee as calculated and described above. Upon the occurrence of an event of default hereunder, the Owner shall continue to pay to the City compensation for any services rendered by it hereunder and reimbursement for all expenses incurred by it in connection therewith.

In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Regulatory Agreement, the Owner agrees to pay reasonable attorney’s fees and other reasonable expenses incurred by the City, the Funding Lender, the Fiscal Agent, CDLAC and/or the Program Administrator in connection with such action.

18. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

19. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Tax Counsel filed with the City, the Fiscal Agent and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, which must be complied with in order to maintain the Tax-Exempt status of interest on the Tax-Exempt Note, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, California, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC, and provided further, that any amendment to Sections 3 and 4 hereof shall require an opinion of Tax Counsel filed with the City, the Fiscal Agent, the Funding Lender and the Owner, to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Note.

20. City Contracting Provisions. The Owner covenants and agrees to comply with the City Contracting Provisions set forth in Exhibit G to this Regulatory Agreement, which are incorporated in and made a part of this Regulatory Agreement by this reference.

21. Notice. All notices, certificates or other communications shall be sufficiently given and shall be deemed given (i) on the date personally delivered or (ii) on the second business day following the date on which the same have been mailed by first class mail, postage prepaid, or (iii) by telecopier or other electronic means (including email), and deemed given one business day after such facsimile or electronic transmission, but only upon prompt receipt of such notice by first class or overnight mail, or (iv) the business day following delivery by a recognized overnight delivery service, addressed as follows:

If to the City:

City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, California 94102  
Attention: City Controller

With copies to: (None of  
which copies shall constitute  
notice to the City)

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

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Director  
Telecopier: 415-701-5501



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

If to the Owner:

160 Freelon Housing Partners, L.P.  
c/o Related California  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attn: Ann Silverberg  
Email: asilverberg@related.com

With a copy to:

160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
18201 Von Karman Ave., Suite 900  
Irvine, CA 92612  
Attn: Asset Management

SFHDC 160 Freelon LLC  
c/o San Francisco Housing Development Corporation  
4439 Third Street  
San Francisco, CA 94124  
Attn: David J. Sobel  
Email: david@sfhdc.org

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, CA 90071  
Attention: Nicole Deddens, Esq.  
Email: ndeddens@bocarsly.com

and

Goldfarb & Lipman LLP  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attention: Lynn Hutchins  
Email: lhutchins@goldfarblipman.com

If to the Investor Limited  
Partner:

Bank of America, N.A.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attention: Asset Management

With a copy to:

Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attn: Michael Williamson, Esq.  
Email: mwilliamson@buchalter.com  
Matter No: B0965-0842

Bank of America, N.A  
4500 Amon Carter Blvd., 2nd Floor  
Fort Worth, TX 76155  
TX2-979-02-22  
Attn: Construction Servicing (Real Estate) Loan Administration  
Manager

Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attn: Michael Williamson, Esq.  
Email: [mwilliamson@buchalter.com](mailto:mwilliamson@buchalter.com)  
Matter No: B0965-0841

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

22. Interpretation. The parties to this Regulatory Agreement acknowledge that each party and their respective counsel have participated in the drafting of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any supplement or exhibit hereto.

24. Third-Party Beneficiaries. The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, and the parties hereto acknowledge that the Funding Lender, the Fiscal Agent and CDLAC are third party beneficiaries of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but

not obligated) to enforce, in accordance with Section 15 hereof, the terms hereof and the terms of the CDLAC Resolution. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Funding Lender or the Fiscal Agent, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Subsection 4(a)(iv) and Section 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Subsection or Section.

25. Multiple Counterparts. This Regulatory Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

26. CDLAC Requirements. In addition to the other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 2 through 6 hereof, the Owner hereby agrees: i) to comply with the CDLAC Resolution (defined herein); ii) that the construction and operation of the Project, and the financing thereof, is and shall be in compliance with the conditions set forth in Exhibit A ("CDLAC Requirements") to CDLAC Resolution No. 24-284, adopted on December 11, 2024, attached hereto as Exhibit F, as it may be amended from time to time (the "CDLAC Resolution"), which CDLAC Requirements are incorporated herein by this reference; and iii) that the Owner will cooperate fully with the City in connection with the City's monitoring and reporting requirements as provided herein. Compliance with the terms of the CDLAC Requirements not contained within this Regulatory Agreement, but referred to in the CDLAC Requirements, is the responsibility of the Owner to report to the City.

After the Tax-Exempt Note is executed and delivered, the terms and conditions set forth in the CDLAC Resolution shall be enforceable by CDLAC (or, in its sole discretion, the City) through an action for specific performance or any other available remedy. In addition, after the Tax-Exempt Note is issued, a change to any of the CDLAC Requirements requires CDLAC's Committee or Executive Director's approval (or as otherwise required by CDLAC).

Compliance with the terms of the CDLAC Requirements not specifically set forth in this Regulatory Agreement is the responsibility of the Owner to report to the City.

In addition to its obligations to CDLAC set forth in the CDLAC Requirements, annually, on March 1<sup>st</sup>, until construction of the Project has been completed and the Owner has submitted to the City the Certificate of Completion, and thereafter on March 1<sup>st</sup> every three years, the Owner shall prepare and submit to the City a Certificate of Compliance II in the form required by CDLAC and referenced in the CDLAC Resolution, executed by an Authorized Owner Representative.

Any of the foregoing requirements of CDLAC contained in this Section 26 may be expressly waived by CDLAC, in its sole discretion, in writing, but (i) no waiver of CDLAC of any requirement of this Section 26 shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement, except to the extent that the City has received an opinion of Tax Counsel that any such provision is not required by the Act or the Code and may be waived without adversely affecting the Tax-Exempt status of interest on the Tax-Exempt Note for federal income

tax purposes; and (ii) any requirement of this Section 26 shall be void and of no force and effect if the City and the Owner receive a written opinion of Tax Counsel to the effect that compliance with any such requirement would cause interest on the Tax-Exempt Note to cease to be Tax-Exempt or to the effect that any compliance with such requirement would be in conflict with the Act, the Code or any other state or federal law.

27. California Debt and Investment Advisory Commission Reporting Requirements.

No later than January 31 of each calendar year (commencing January 31, 2026), the Owner, on behalf of the City, agrees to provide the California Debt and Investment Advisory Commission, by any method approved by such Commission, with a copy to the City, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Notes are no longer outstanding or (ii) the proceeds of the Notes and the Funding Loan have been fully spent.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Owner have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through the Mayor's Office of  
Housing and Community Development

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

[Signatures Continue on Following Page.]

[SIGNATURE PAGE TO REGULATORY AGREEMENT – 160 FREELON]

OWNER:

160 Freelon Housing Partners, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

[SIGNATURE PAGE TO REGULATORY AGREEMENT – 160 FREELON]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

##### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)    ☐ Limited    ☐ General  
☐ Attorney-In-Fact  
☐ Fiscal Agent(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

##### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

##### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)    ☐ Limited    ☐ General  
☐ Attorney-In-Fact  
☐ Fiscal Agent(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

##### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

**EXHIBIT B**  
**INCOME CERTIFICATION FORM**

A current version of the CTCAC form may be downloaded from the State Treasurer's website at the following link: <http://www.treasurer.ca.gov/ctcac/compliance/tic.pdf>.

## EXHIBIT C

### COMPLETION CERTIFICATE

CITY AND COUNTY OF SAN FRANCISCO  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Director

Re: City and County of San Francisco, California  
Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1, and  
Multifamily Housing Revenue Note (160 Freelon) Series 2025D-2 (Taxable)

The undersigned (the "Owner") hereby certifies that all aspects of the construction of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of June 1, 2025, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement"), were substantially completed and available for occupancy by tenants in the Project as of \_\_\_\_\_.

1. The undersigned hereby certifies that:

- (a) the aggregate amount disbursed on the Borrower Loan (as that term is used in the Regulatory Agreement) to date is \$ \_\_\_\_\_;
- (b) all amounts disbursed on the Borrower Loan have been applied to pay or reimburse the undersigned for the payment of Project Costs (as that term is used in the Regulatory Agreement) and none of the amounts disbursed on the Borrower Loan has been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and
- (c) as shown on the attached sheet (showing the breakdown of expenditures for the Project and the source of the funds which were used to pay such costs), at least 95 percent of the amounts disbursed on the Borrower Loan have been applied to pay or reimburse the Owner for the payment of Qualified Project Costs (as that term is used in the Regulatory Agreement) and less than 25 percent of the amounts disbursed on the Borrower Loan, exclusive of amounts applied to pay the costs of issuing the Notes, have been applied to pay or reimburse the Owner for the cost of acquiring land.

[Signatures Appear on Next Page.]

OWNER:

160 Freelon Housing Partners, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

## EXHIBIT D

### CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Project Name: 160 Freelon

CDLAC Application Number: 24-767

CDLAC Resolution Number: 24-284

Property Address: 160 Freelon Street, San Francisco, CA

Project Completion Date (if completed, otherwise mark NA): \_\_\_\_\_

Names of Obligations: City and County of San Francisco, California, Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, and Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable)

The undersigned, being the authorized representatives of 160 Freelon Housing Partners, L.P., a California limited partnership (the “Owner”), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owner’s participation in the City and County of San Francisco (the “City”) Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of June 1, 2025 (the “Regulatory Agreement”), between the Owner and the City; and
2. the Borrower Loan Agreement, dated as of June 1, 2025, among the City, the Fiscal Agent and the Owner.

Terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Regulatory Agreement.

The undersigned further certifies that:

A. There have been no changes to the ownership entity, principals or property management of the Project since the Notes were executed and delivered, or since the last certification was provided (as applicable), except as described below:

(If so, please attach a request to revise the CDLAC Resolution, noting all pertinent information regarding the change, otherwise state “NONE”)

If the Project has not yet been placed in service, mark N/A for the balance of the items below:

B. During the preceding twelve (12) months, (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) \_\_\_\_\_% of the units in the Project were occupied by Qualified Tenants (minimum of forty percent (40%), excluding the manager’s unit).

C. As of the date of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Low-Income and Very Low-Income Tenants, or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Low-Income or Very Low-Income Tenant vacated such unit, as indicated below:

Occupied by Very Low-Income Tenants:

Studio units: _____	Unit Nos. _____
1 bedroom units: _____	Unit Nos. _____
2 bedroom units: _____	Unit Nos. _____
3 bedroom units: _____	Unit Nos. _____
4 bedroom units: _____	Unit Nos. _____

Total percentage occupied by Very Low-Income Tenants: \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by a Very Low-Income Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Occupied by Low-Income Tenants:

Studio units: _____	Unit Nos. _____
1 bedroom units: _____	Unit Nos. _____
2 bedroom units: _____	Unit Nos. _____
3 bedroom units: _____	Unit Nos. _____
4 bedroom units: _____	Unit Nos. _____

Total percentage occupied by Low-Income Tenants: \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by a Low-Income Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period, not less than 40% of the occupied units in the Project (excluding the manager's units) have been rented to (or are vacant and last occupied by) Qualified Tenants. The

undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

D. The units occupied by Low-Income Tenants and Very Low-Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

E. Select appropriate certification: [No unremedied default has occurred under the Regulatory Agreement, the Notes, the Borrower Loan Agreement or the Security Instrument.] [A default has occurred under the \_\_\_\_\_. The nature of the default and the measures being taken to remedy such default are as follows: \_\_\_\_\_.]

F. There has been no change of use for the Project, except as follows: (please describe if any, or otherwise indicate "NONE")

G. Select appropriate certification: The undersigned hereby certifies that the Project [has satisfied all] [except as described below, has satisfied all] of the requirements memorialized in Exhibit A of the CDLAC Resolution, a copy of which is attached hereto (i.e. qualifying project completion, qualifying depreciable asset purchase, qualifying loan originations, the use of public funds, manager units, income rent restrictions, sustainable building methods, etc., as applicable), and thus has achieved all public benefit requirements (excluding service amenities) as presented to CDLAC.

[Describe any requirements not satisfied: \_\_\_\_\_]

H. As captured in Exhibit A of the CDLAC Resolution, the Project has committed to and is currently providing the following service amenities for a minimum of ten (10) years, on a regular and ongoing basis, which are provided free of charge (with the exception of day care services):

Please check the services that apply or write N/A where appropriate:

\_\_\_\_\_ After-school Programs

\_\_\_\_\_ Educational, health and wellness, or skill building classes

\_\_\_\_\_ Health and Wellness services and programs (not group classes)

\_\_\_\_\_ Licensed Childcare provided for a minimum of twenty (20) hours per week (Monday-Friday)

\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

1) For this reporting period, attached is evidence (i.e. MOUs, contracts, schedules, calendars, flyers, sign-up sheets, etc.) confirming that the above-listed services are being provided and have met the requirements of Exhibit A of the CDLAC Resolution.

2) If any of the above services requirements were not met, what corrective action is being taken to comply?

(Please also attach the completed project sponsor certification form as provided in the CDLAC Resolution)

(Please also attach the completed Occupancy and Rent Information form attached hereto)

I. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief, and the undersigned acknowledges and agrees that the City will be relying solely on the foregoing certifications and accompanying documentation, if any, in making its certification to CDLAC pursuant to Section 5144 of the CDLAC regulations (Division 9.5 of Title 4 of the California Code of Regulations), and agrees to provide to the City such documentation or evidence, in support of the foregoing certifications, as the City or CDLAC may request.

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings given to them in the Regulatory Agreement.

DATED: \_\_\_\_\_

OWNER:

160 Freelon Housing Partners, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer



**EXHIBIT E**

**CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attention: Executive Director

City and County of San Francisco, California  
Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, and  
Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable)

The undersigned, being the authorized representative(s) of 160 Freelon Housing Partners, L.P., a California limited partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project, as defined in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of June 1, 2025, between the Owner and the City and County of San Francisco, financed in part from the proceeds of the above-captioned Notes were first occupied on \_\_\_\_\_; and

Fifty percent (50%) of the dwelling units in the Project financed in part from the proceeds of the above-captioned Notes were first occupied on \_\_\_\_\_.

[Signatures Appear on Next Page.]

DATED: \_\_\_\_\_

OWNER:

160 Freelon Housing Partners, L.P.,  
a California limited partnership

By: Related/160 Freelon Development Co., LLC,  
a California limited liability company  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 Freelon LLC,  
a California limited liability company,  
its managing general partner

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

Acknowledged:

City and County of San Francisco

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

[See Attached]

## EXHIBIT G

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

The following provisions shall apply to this Regulatory Agreement as if set forth in the text thereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Regulatory Agreement (referred to herein as “Agreement”).

1. Nondiscrimination Requirements.

(a) *Nondiscrimination in Contracts.* Owner shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Owner shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Owner is subject to the enforcement and penalty provisions in Articles 131 and 132. Owner shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Owner shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Owner is subject to the enforcement and penalty provisions in Articles 131 and 132.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Owner 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 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 Labor and Employment Code Article 131.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Owner confirms that Owner has read and understood that 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), City urges Owner 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. City reserves the right to deny access to, or require Owner to remove from, City facilities personnel of the Owner or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in

any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. 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 Laws Requiring Access for People with Disabilities. Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities, as specifically provided in the ADA. Owner shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

6. Sunshine Ordinance. Owner acknowledges that this Agreement and all records related to its formation, Owner's performance of services pursuant to this Agreement, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 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, Owner 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 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 City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Owner. Owner 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. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. Owner shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Owner is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Owner is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Owner certifies that it complies with Article 111.

9. Requiring Health Benefits for Covered Employees. Labor and Employment Code Article 121 applies to this contract. Owner shall comply with the requirements of Article 121. For each Covered Employee, Owner shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Owner 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 Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Owner is subject to the enforcement and penalty provisions in Article 121.

10. Prohibition on Use of Public Funds for Political Activity. In performing services pursuant to this Agreement, Owner shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by 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. Owner is subject to the enforcement and penalty provisions in Chapter 12G.

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

In the performance of its services, Owner may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Owner, or Owner collects such information on City's behalf, such information must be held by Owner in confidence and used only in performing the Agreement. Owner 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. Owner agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as

though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Owner is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

The requirements of Article 142 shall only apply to a Owner'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. Article 142 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. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

14. Conflict of Interest. By executing this Agreement, Owner 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 City if it becomes aware of any such fact during the term of this Agreement.

15. Food Service Waste Reduction Requirements. Owner 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 remedies for noncompliance provided therein.

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

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

18. Prevailing Wages. Services to be performed by Owner under this Agreement may involve the performance of work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, or San Francisco Administrative Code Chapter 102 (collectively, "Covered Services"), which is incorporated into

this Agreement as if fully set forth herein and will apply to any Covered Services performed by Owner.

19. Assignment. The Services to be performed by Owner are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

20. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Owner, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.



**EXHIBIT H**  
**FORM OF REPORTS**

The form of the Annual Monitoring Report and the CNA (Fannie Mae Form 4327) may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

<https://sf.gov/resource/2022/compliance-monitoring>

## **EXHIBIT I**

### **OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE UP ACTIVITIES**

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

[https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017_0.pdf)

## **EXHIBIT J**

### **MARKETING AND TENANT SELECTION PLAN**

The Marketing Plan and Tenant Selection Plan (also referred to as “Resident Section Criteria”) may be downloaded from the Mayor’s Office of Housing and Community Development website at the following link:

[https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%203.31.2017_0.pdf)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Buchalter  
1000 Wilshire Blvd. #1500  
Los Angeles, California 90017  
Attention: Scott Salomon, Esq.  
Ref: B0965-0843

Assessor's Lots [REDACTED]

Space Above For Recorder's Use

### **ASSIGNMENT OF DEED OF TRUST AND RELATED DOCUMENTS**

This **ASSIGNMENT OF DEED OF TRUST AND RELATED DOCUMENTS** ("**Assignment**") is dated as of [REDACTED], 2025 from the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California, acting by and through the Mayor's Office of Housing and Community Development (the "**Governmental Lender**"), to **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, as fiscal agent (the "**Fiscal Agent**"), in trust for the benefit of the Funding Lender (defined below) under the "Funding Loan Agreement" (defined below).

### **RECITALS**

A. Pursuant to Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the "**Act**"), Governmental Lender has determined to make a mortgage loan to Transbay 2 Family, L.P., a California limited partnership ("**Borrower**"), in the maximum aggregate principal amount of \$[REDACTED] (the "**Borrower Loan**") to provide for the financing of an 85-unit multifamily rental housing development project (the "**Project**") commonly known as "160 Freelon", in the County of San Francisco, State of California (as more particularly described on Exhibit A, the "**Property**"). Borrower has agreed to use the proceeds of the Loan to finance the acquisition and construction of the Project and to pay certain closing costs with respect to the Loan.

B. The Borrower Loan will be made pursuant to that certain Borrower Loan Agreement (as amended from time to time, the "**Borrower Loan Agreement**") dated as of [REDACTED], 2025, among Governmental Lender, as lender, Borrower, as borrower, and Fiscal Agent, as fiscal agent. The Borrower Loan is evidenced by, among other things, that certain Promissory Note (Tax-Exempt) dated as of even date herewith in the original maximum principal amount of \$[REDACTED] (as amended from time to time, the "**Tax-Exempt Borrower Note**") and that certain Promissory Note (Taxable) dated as of even date herewith in the original maximum principal amount of \$[REDACTED] (as amended from time to time, the "**Taxable Borrower Note**", and together with the Tax-Exempt Borrower Note, individually and collectively, the "**Note**") dated as of even date herewith, and made by Borrower to the order of Governmental Lender. To secure, among other obligations, the Borrower's obligations under the Borrower Loan Agreement and the Note, Borrower, as trustor, has executed and delivered, or will concurrently execute and deliver, to the Governmental Lender, as beneficiary, that certain Leasehold Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing (as amended from time to time, the "**Mortgage**"), dated as of even date herewith encumbering, among other collateral, Borrower's leasehold interest in the Property, and fee interest in the improvements and personal property located thereon. The Mortgage is being duly recorded in the Official Records of the County of San Francisco, State of California, substantially concurrently with the recordation of this Assignment. Borrower has also

executed and delivered to Governmental Lender, as additional security for the Borrower Loan, (i) an Assignment of Contracts, Plans and Specifications dated as of even date herewith and such Consents to Assignment by Architect and Contractor as required therein; (ii) an Assignment and Subordination of Management Agreement dated as of even date herewith and consented to by Manager; (iii) a Security Agreement (Assignment of Partnership Interests and Capital Obligations) dated as of even date herewith, (iv) an Assignment Subsidy Commitments dated as of even date herewith, (v) an Assignment of Developer Agreement and Subordination of Developer Agreement and Fees dated as of even date herewith and consented to by Developer, and (vi) Indemnity Agreement (Borrower) dated as of even date herewith. The documents identified in this paragraph, together with all "Borrower Loan Documents" (as defined in the Funding Loan Agreement, defined below) are collectively referred to herein as the "**Borrower Documents**".

C. The Related Companies, L.P., a New York limited partnership (the "**Guarantor**"), has executed and delivered to the Governmental Lender (i) a Payment Guaranty dated as of even date herewith, (ii) a Completion Agreement dated as of even date herewith, and (iii) an Indemnity Agreement (Third Party Indemnity) dated as of even date herewith (collectively, the "**Guaranties**"), guaranteeing certain obligations of Borrower under the Borrower Loan Documents.

D. Governmental Lender, in order to obtain the funds necessary to enable it to make the Borrower Loan to the Borrower, has determined to obtain a loan (the "**Funding Loan**") from Funding Lender, in the maximum aggregate principal amount of \$[REDACTED]. The Funding Loan will be made by Bank of America, N.A., a national banking association (together with its successors and assigns, the "**Funding Lender**"), as initial funding lender to Governmental Lender pursuant to that certain Funding Loan Agreement (as amended from time to time, the "**Funding Loan Agreement**") dated as of [REDACTED], 2025, by and among Funding Lender, as lender, the Governmental Lender, as borrower, and the Fiscal Agent, as fiscal agent. The Funding Loan will be evidenced by, among other things, that certain (i) City and County of San Francisco, California Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1 in the amount of \$[REDACTED] (the "**Tax-Exempt Governmental Note**"), and (ii) City and County of San Francisco, California Multifamily Housing Revenue Note (160 Freelon), Series 2025D-2 (Taxable) in the amount of \$[REDACTED] ("**Taxable Governmental Note**", and together with the Tax-Exempt Governmental Note, individually and collectively, the "**Governmental Lender Note**") dated as of even date herewith. The Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, has agreed to fund the proceeds of the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will in turn be used by Governmental Lender to fund the Borrower Loan to the Borrower. In order to secure the repayment of the Funding Loan, Governmental Lender has pledged to Fiscal Agent, in trust for the benefit of the Funding Lender, pursuant to the terms and conditions of the Funding Loan Agreement, all of Governmental Lender's right, title and interest in, to and under the Borrower Loan (except for the Unassigned Rights (as defined in the Funding Loan Agreement)), the Borrower Loan Agreement, the Note, the Mortgage and all of the other "Borrower Loan Documents" (as defined in the Funding Loan Agreement) To further evidence and perfect such pledge, Governmental Lender, substantially concurrently herewith, has duly endorsed the Note, without recourse, to the order of Fiscal Agent, in trust for the benefit of the Funding Lender, and has agreed to execute and deliver to Fiscal Agent, in trust for the benefit of the Funding Lender, this Assignment, which assigns to Fiscal Agent, in trust for the benefit of the Funding Lender, among other items, all of Governmental Lender's right, title and interest under the Mortgage and the other Borrower Documents and the Guaranties (except for the Unassigned Rights).

E. The Governmental Lender desires to assign and transfer to the Fiscal Agent, in trust for the benefit of the Funding Lender all its right, title and interest in and to (but not its obligations under) the Borrower Documents and the Guaranties, excluding all Unassigned Rights

expressly reserved to the Governmental Lender in the Funding Loan Agreement (which reservations include, without limitation, rights as to payment of certain fees and expenses and rights to indemnification and notices), and the Fiscal Agent, in trust for the benefit of the Funding Lender, desires to acquire Governmental Lender's rights, title and interest as aforesaid under the Borrower Documents and the Guaranties in accordance with the terms hereof. The Fiscal Agent is joining in the execution of this Assignment in order to evidence its acceptance hereof.

F. The Borrower is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the obligations of the Borrower Documents under the Borrower Documents shall continue to be effective notwithstanding the assignment by the Governmental Lender to the Fiscal Agent, in trust for the benefit of the Funding Lender, of its rights therein.

G. The Guarantor is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Guaranties shall continue to be effective notwithstanding the assignment by the Governmental Lender to the Fiscal Agent, in trust for the benefit of the Funding Lender, of its rights therein.

## **AGREEMENT**

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Assignment. The Governmental Lender sells, assigns and sets over and transfers to the Fiscal Agent, in trust for the benefit of the Funding Lender all the right, title and interest of the Governmental Lender in, to and under (but not its obligations under) the Borrower Documents and the Guaranties, excluding any Unassigned Rights expressly reserved to the Governmental Lender in the Funding Loan Agreement (which reservation includes, without limitation, rights as to payment of fees and expenses, rights to indemnification and notices). This Assignment is made and shall be without recourse, warranty or representation of the Governmental Lender.

Section 2. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby. This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument. It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California, without reference to the conflicts of laws and principles of the State of California.

*[Signature pages follow]*

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Deed of Trust and Related Documents as of the date first above written.

**GOVERNMENTAL LENDER:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
acting by and through the Mayor's Office of  
Housing and Community Development

By: \_\_\_\_\_  
Name: Daniel Adams  
Title: Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy City Attorney

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2025 before me, \_\_\_\_\_,  
a Notary Public, personally appeared Daniel Adams, who proved to me on the basis of satisfactory  
evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies),  
and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf  
of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal) \_\_\_\_\_





The undersigned, being the Borrower referred to in the foregoing Assignment of Deed of Trust Documents, hereby acknowledges receipt and acceptance thereof, consents and agrees to the Assignment made therein and agrees that its obligations under the Borrower Documents shall remain in full force and effect notwithstanding the assignment effected by the foregoing Assignment.

**BORROWER:**

**160 FREELON HOUSING PARTNERS, L.P.,**  
a California limited partnership

By: RELATED/160 FREELON DEVELOPMENT CO., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg  
President

By: SFHDC 160 FREELON LLC,  
a California limited liability company

By: San Francisco Housing Development Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
David J. Sobel  
Chief Executive Officer

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2025 before me, \_\_\_\_\_,  
a Notary Public, personally appeared Ann Silverberg, who proved to me on the basis of  
satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s),  
or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_ (Seal)

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2025 before me, \_\_\_\_\_,  
a Notary Public, personally appeared David J. Sobel, who proved to me on the basis of  
satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s),  
or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_ (Seal)

The undersigned, being a Guarantor referred to in the foregoing Assignment of Deed of Trust and Related Documents, hereby acknowledges receipt and acceptance thereof, consents and agrees to the Assignment made therein and agrees that its obligations under the Guaranties shall remain in full force and effect notwithstanding the assignment effected by the foregoing Assignment.

**GUARANTOR:**

**THE RELATED COMPANIES, L.P.,**  
a New York limited partnership

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

**ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2025 before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_, who proved to me  
on the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s),  
or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION**

[To be inserted]



160 FREELON  
BUDGET AND FINANCE  
COMMITTEE

May 14, 2025

JENNY COLLINS, PROJECT MANAGER  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

1

### File #250462

Authorization to issue and deliver tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed **\$76M**

2

### File #250461

- 1) Ground Lease for initial term of 75 yrs. plus option to extend and **\$15,000** Annual Base Rent
- 2) Amended and Restated City (MOHCD) Loan Agreement up to **\$22,577,900**
- 3) Beneficial easement agreements with Tishman Speyer

160 FREELON - BUDGET AND FINANCE COMMITTEE AGENDA ITEMS

# PROJECT HISTORY – 160 FREELON

- June 2019: Planning Commission approved mixed-use development at Bryant and Brannan Streets, including 160 Freelon as land to be dedicated to MOHCD for affordable housing.
- November 2020: Related Companies of California (Related) and San Francisco Housing Development Corporation (SFHDC) selected as co-Sponsors to develop affordable project via a Request for Qualifications (RFP).
- February 2023: Planning Department Approval of Project under California AB 2162.
- August 2024: State HCD awards \$29M AHSC Financing for the Affordable Housing and \$12,162,574 in AHSC grant funding for offsite transportation related amenities, and sustainable transportation improvements.
- December 2024: Project awarded bond allocation from CDLAC and tax credits from CTCAC.
- February 2025: City acquires 160 Freelon from Tishman Speyer affiliate via Land Dedication Agreement.







## Affordable Housing

- Nine-story building with 85 affordable units
  - 22 units for families exiting homelessness
  - 5 PLUS units for HIV-positive low-income households
  - 1 resident manager unit
- 50% to 80% MOHCD AMI
- Ground floor includes a residential lobby, resident services offices, and a community room

## FINANCING

City MOHCD Loan	\$22.5M
Tax Credits	\$44.3M
HCD MHP Loan	\$29M
Private Perm Loan	\$2.8M
General Partner Equity and Accrued Interest	\$1.8M
<b>Total Development Cost</b>	<b>\$100.4M</b>

Total City subsidy per unit of \$265,622

Total development cost per unit of \$1,181,341

## TIMELINE

- Housing Construction June 2025
- Unit lottery December 2026
- Project completion March 2027
- Leasing Up Complete October 2027





RELATED CALIFORNIA PROJECT STAFF SPENCER SHEAFF, THU NGUYEN  
SFHDC PROJECT STAFF: MICHAEL MANIGAULT, SARAH GRAHAM  
PROJECT WEBSITE: 160FREELON.ORG

## CERTIFICATE OF TEFRA PUBLICATION

This Certificate of Publication is executed this day for the purposes of demonstrating compliance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and applicable Treasury Regulations (the “Regulations”). The undersigned, as a duly qualified and appointed representative of the **City and County of San Francisco** (the “Issuer”), hereby certifies as follows:

1. A Notice of Public Hearing, attached as Exhibit A, with respect to the issuance of tax-exempt bonds/obligations (the “Bonds”) of the Issuer for the benefit of the project described therein (the “Project”), was published on the Issuer's primary website address of <https://sfmohcd.org/notices> on **December 20, 2024**.

2. The Notice of Public Hearing was posted in an area of the Issuer's website that is used to inform its residents about events affecting the residents and which is clearly identified and accessible to members of the general public seeking information concerning the issuance of the Bonds and the Project.

3. Evidence of the website publication of the Notice of Public Hearing is attached hereto as Exhibit B. This Issuer will maintain records showing that the Notice of Public Hearing containing the requisite information was timely posted on the Issuer's website.

4. The Notice of Hearing remained published on the Issuer's website for a period of at least seven (7) consecutive days, from the date specified in paragraph 1, above, through and including the hearing date, and the Issuer held the hearing as described in the Notice of Public Hearing on **Monday, January 6, 2025 at 2:00PM**.

5. Following the hearing, the Issuer submitted the request for approval of the Issuance of the Bonds and Project to the applicable elected representative of the Issuer as required by Section 147(f) of the Code and the Regulations.

Dated: **Friday, December 20, 2024 at 4:00PM**

CITY AND COUNTY OF SAN  
FRANCISCO

By: William R Wilcox

-  
Name: William Wilcox  
Title: Bond Program Manager  
Mayor's Office of Housing and Community  
Development

EXHIBIT A

NOTICE OF PUBLIC HEARING



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Monday, January 6<sup>th</sup>, 2025 at 2:00 p.m., by toll-free teleconference at (800) 743-4099, participant code: 3299966, the City and County of San Francisco (the "City") will conduct a public hearing (the "Public Hearing") at which time the City will hear and consider information concerning the proposed sale and issuance by the City of one or more multifamily affordable housing mortgage revenue bond issues (collectively, the "Bonds") in the respective maximum aggregate principal amounts set forth in the table below. The Bonds of each issue will be part of a plan of finance issued in one or more series from time to time, including bonds issued to refund such bonds in one or more series from time to time outstanding, and at no time to exceed in outstanding principal amount the maximum principal amount for such issue. The proceeds of each such issue of the Bonds will be loaned to the respective borrower/owner entity set forth in the table below (or an affiliate thereof or successor thereto) (each, a "Borrower"), or another entity to be formed by its general partner, which is expected to be as set forth in the table below, pursuant to a loan agreement (each, a "Loan Agreement") between the City and the applicable Borrower. The proceeds of each issue of the Bonds will be used by the applicable Borrower to finance the new construction of the respective residential rental housing facility described in the table below. Each Project is or will be located in San Francisco, California at the address set forth in the table below (each, a "Project"). Each Project is or will be owned and operated by the Borrower set forth in the table below.

<u>Max. Amount</u>	<u>Borrower/Owner</u>	<u>General Partner</u>	<u>Type of Project</u>	<u>No. of Units</u>	<u>Street Addresses</u>
\$13,987,000 Tax-Exempt	Chinatown Community Development Center Inc.	Chinatown Community Development Center (CCDC)	Acquisition Rehabilitation	63	1303 Larkin Street, San Francisco CA
\$48,900,000 Tax-Exempt	160 Freelon Housing Partners, L.P.	Related California and the San Francisco Housing Development Corporation (SFHDC)	New Construction	85	160 Freelon Street., San Francisco CA
\$57,075,000 Tax-Exempt	Sunnydale Block 7 Housing Partners, L.P.	Mercy Housing	New Construction	89	65 Santos Street, San Francisco CA
\$53,305,000 Tax-Exempt	Sunnydale Block 9 Housing Partners, L.P.	Related California	New Construction	95	1652 Sunnydale Avenue, San Francisco CA

\$73,004,348 Tax-Exempt	Balboa Lee Avenue, L.P.	BRIDGE Housing	New Construction	128	11 Frida Kahlo Way, San Francisco CA
\$48,478,327 Tax-Exempt	MidPen Housing Corporation	MidPen	New Construction	92	850 Turk Street, San Francisco CA

Each issue of the Bonds will be paid entirely by the applicable Borrower from the revenues of the applicable Project, in accordance with the applicable Loan Agreement. Neither the full faith and credit nor the taxing power of the City, the State of California (the "State") or any other political corporation, subdivision or agency of the State is pledged to the payment of the principal, premium, if any, or interest on any of the Bonds, nor shall the City, the State or any other political corporation, subdivision or agency of the State be liable or obligated to pay the principal, premium, if any, or interest on any of the Bonds.

The Public Hearing is intended to comply with the public approval requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

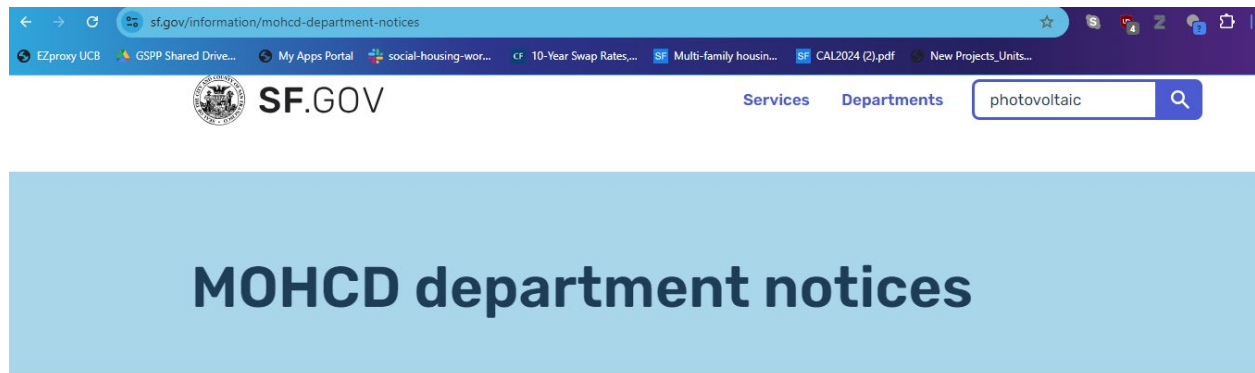
All those interested in matters related to the issuance of any of the Bonds and to the financing of any of the Projects are invited to attend and be heard at this hearing in person or by telephone. Interested parties may appear in person or call into the hearing at the time and number indicated above, or submit written comments, which must be received prior to the Public Hearing, to the City, c/o William Wilcox, Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.

Date: December 20, 2024

CITY AND COUNTY OF SAN FRANCISCO

## EXHIBIT B

### EVIDENCE OF PUBLICATION



#### General Notices

- [August 16, 2024 Notice of August 28, 2024 Public Hearing for TEFRA for Multiple Projects](#) (pdf)
- [February 22, 2024 Notice of March 5, 2024 Public Hearing and Availability of the Draft 2024-25 Action Plan and HOME-ARP Plan for Public Review and Comment](#) (pdf)
- [February 7, 2024 Public Notice of Public Meeting Regarding Mayor's Office Budget](#) (pdf)
- [January 8, 2024 Notice of January 17, 2024 Public Hearing for TEFRA for Multiple Projects](#) (pdf)
- [December 8, 2023 - Notice of December 14, 2023 Public Meeting on Housing and Community Development Needs for Program Year 2024-2025](#) (pdf)

#### Related

##### [About Community Development](#)

An overview of MOHCD's  
Community Development

##### [South of Market Community Stabilization Fund](#)

The mission of the South of  
Market Community Stabilization



# CITY AND COUNTY OF SAN FRANCISCO

Public Hearing as required by Section 147(f) of the Internal Revenue Code of 1986

## Multiple Projects

Date: January 6, 2025

Time: 2:00 PM

Location: By toll-free teleconference at (800) 743-4099, participant code: 3299966

Present: See Exhibit A - Sign-In Sheet

The hearing was held to obtain public comment on the proposed issuance by the City and County of San Francisco of one or more multifamily affordable housing tax-exempt mortgage revenue bond issues (collectively, the "Bonds") in the respective maximum aggregate principal amounts set forth in the table below. The proceeds of each such issue of the Bonds will be loaned to the respective borrower/owner entity set forth in the table below (or an affiliate thereof or successor thereto) (each, a "Borrower"), or another entity to be formed by its general partner, which is expected to be as set forth in the table below, pursuant to a loan agreement (each, a "Loan Agreement") between the City and the applicable Borrower. Each Project is or will be owned and operated by the Borrower set forth in the table below.

<u>Max. Amount</u>	<u>Borrower/Owner</u>	<u>General Partner</u>	<u>Type of Project</u>	<u>No. of Units</u>	<u>Street Addresses</u>
\$13,987,000 Tax-Exempt	Chinatown Community Development Center Inc.	Chinatown Community Development Center (CCDC)	Acquisition Rehabilitation	63	1303 Larkin Street, San Francisco CA
\$48,900,000 Tax-Exempt	160 Freelon Housing Partners, L.P.	Related California and the San Francisco Housing Development Corporation (SFHDC)	New Construction	85	160 Freelon Street., San Francisco CA
\$57,075,000 Tax-Exempt	Sunnydale Block 7 Housing Partners, L.P.	Mercy Housing	New Construction	89	65 Santos Street, San Francisco CA
\$53,305,000 Tax-Exempt	Sunnydale Block 9 Housing Partners, L.P.	Related California	New Construction	95	1652 Sunnydale Avenue, San Francisco CA
\$73,004,348 Tax-Exempt	Balboa Lee Avenue, L.P.	BRIDGE Housing	New Construction	128	11 Frida Kahlo Way, San Francisco CA

\$48,478,327 Tax-Exempt	MidPen Housing Corporation	MidPen	New Construction	92	850 Turk Street, San Francisco CA
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The public hearing convened at 2:00 PM. There were no written comments received on the proposed issuance. Except for the representatives from the Mayor's Office of Housing and Community Development and the project sponsors in Exhibit A - Sign-In Sheet and/or members of the public who declined to identify themselves, there were no members of the public by telephone.

The hearing was adjourned at 2:30 PM.

Minutes prepared by: William R Wilcox  
Date: January 6, 2025 William Wilcox

Exhibit A

**Multiple Projects  
TEFRA Hearing  
SIGN-IN SHEET  
Monday January 6, 2025 - 2:00 pm**

Name	Organization	e-mail address
Warren Ritter	Mission Economic Development Agency (MEDA)	<a href="mailto:writter@medasf.org">writter@medasf.org</a>
Joanna Ladd	Chinatown Community Development Center	<a href="mailto:joanna.ladd@chinatowncdc.org">joanna.ladd@chinatowncdc.org</a> ;
Omar Masry	MOHCD	<a href="mailto:omar.masry@sfgov.org">omar.masry@sfgov.org</a>
William Wilcox	MOHCD	<a href="mailto:william.wilcox@sfgov.org">william.wilcox@sfgov.org</a>



## CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

---

901 P Street, Suite 213A  
Sacramento, CA 95814  
p (916) 653-3255  
f (916) 653-6827  
cdlac@treasurer.ca.gov  
www.treasurer.ca.gov/cdlac

### MEMBERS

FIONA MA, CPA, CHAIR  
STATE TREASURER

GAVIN NEWSOM  
GOVERNOR

MALIA M. COHEN  
STATE CONTROLLER

INTERIM EXECUTIVE DIRECTOR  
MARINA WIANT

December 11, 2024

Eric D. Shaw  
Director  
City and County of San Francisco  
1 South Van Ness Ave, 5th Floor  
San Francisco, CA 94103

### **RE: RESOLUTION ATTESTING TO THE TRANSFER OF PRIVATE ACTIVITY BOND ALLOCATION**

Dear Eric D. Shaw:

Enclosed is a copy of Resolution No. 24-284, adopted by the California Debt Limit Allocation Committee (the "Committee") on December 11, 2024, transferring \$48,900,000.00 of the 2024 State Ceiling on Qualified Private Activity Bonds to the City and County of San Francisco (the "Applicant") for the 160 Freelon (the "Project"). The Resolution No. 24-284 establishes the terms and conditions under which the allocation has been granted. Please read it carefully and keep a copy in your permanent files.

The following is additional information pertaining to the use of the allocation for this Project:

1. Performance Deposit: Pursuant to Section 5050 of the Committee's Regulations, a performance deposit to one-half of one percent (0.5%) of the Allocation requested, not to exceed \$100,000, made payable to the Applicant, shall be evidenced within 20 calendar days following an award of an Allocation.

The performance deposit certified in support of this project (\$100,000) is to remain on deposit until you receive authorization from the Committee that it may be released. This written release will be provided once the Committee receives: the "Report of Action Taken" template indicating that the allocation transferred was used for the Project's issuance of bonds, a copy of the conformed regulatory agreement, and the payment of the second installment of the CDLAC filing fee. A copy of the conformed regulatory agreement should be sent electronically to CDLAC@treasurer.ca.gov. The full amount of the deposit will be released upon the Executive Director's approval if at least 80% of the allocation to this project is used for the issuance of bonds. If an amount less than 80% of the allocation is used to issue bonds, a proportionate amount of the deposit will be subject to forfeiture.

2. IRS Certification: The IRS-required certification (Certificate pursuant to Section 149(e)(2)(F) Internal Revenue Code of 1986, As Amended) will be prepared by CDLAC staff and sent to the Applicant's bond counsel once the Committee receives the Report of Action Taken template from the Applicant.

3. Second Installment of Filing Fee: **Enclosed is an invoice for this Project.** The invoice attached herein should be considered final, due and payable upon the issuance of bonds.

4. Compliance: The Certification of Compliance II or equivalent form is to be submitted by the Project Sponsor to the Applicant by the Applicant's specified deadline, but no later than March 1st annually until the project's Certificate of Completion has been submitted to the Applicant. Following the submission of the Certificate of Completion or equivalent form to the Applicant, the Certification of Compliance II is to be submitted March 1st every three (3) years thereafter. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification (Self Certification) form must be submitted by the Applicant online every year until the Certificate of Completion has been submitted to the Applicant. After the completion of the project has been reported, the Self Certification will be required to be submitted March 1st every three years thereafter pursuant to Section 5144 of the CDLAC Regulations. Verification to CDLAC of income and rental information is not required in advance of the submission of the Certificate of Completion. A copy of the Certification of Compliance II and the Certificate of Completion forms may be found at this website location: <https://www.treasurer.ca.gov/cdlac/compliance.asp>. Failure to submit Compliance may result in disqualification from future program participation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marina Wiant", is written over a light blue horizontal line.

Marina Wiant  
Interim Executive Director

Enclosures

cc: William Wilcox, City and County of San Francisco  
Vanessa Legbandt, Esq., Stradling, Yocca, Carlson & Rauth  
Thu Nguyen, 160 Freelon Housing Partners, L.P.

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**RESOLUTION NO. 24-284**

**A RESOLUTION TRANSFERRING A PORTION OF THE 2024 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT**

**WHEREAS**, the California Debt Limit Allocation Committee ("CDLAC") is authorized to implement the volume limit for the state on private activity bonds established pursuant to federal law, annually determine a state ceiling on the aggregate amount of private activity bonds that may be issued, and allocate that aggregate amount among state and local agencies (Gov. Code, § 8869.81 et seq.); and

**WHEREAS**, CDLAC has received an application ("Application") from the City and County of San Francisco ("Applicant") for the transfer to the Applicant of a portion of the 2024 state ceiling for use by the Applicant to issue bonds or other obligations ("Bonds") for 160 Freelon ("Project") as described in Exhibit A; and

**WHEREAS**, 160 Freelon Housing Partners, L.P. ("Project Sponsor") has represented and the Applicant has confirmed in the Application certain facts and information concerning the Project; and

**WHEREAS**, in evaluating the Project and allocating a portion of the state ceiling to the Applicant for the benefit of the Project, CDLAC staff has relied upon the written facts and information represented in the Application by the Project Sponsor and the Applicant; and

**WHEREAS**, it is consistent with CDLAC's statutes and regulations for CDLAC to transfer a portion of the 2024 state ceiling ("Allocation") to benefit the Project;

**NOW, THEREFORE, BE IT RESOLVED** by the California Debt Limit Allocation Committee the following:

**Section 1.** An amount of the 2024 state ceiling on the aggregate amount of private activity bonds equal to \$48,900,000.00 shall be transferred to the Applicant. This Allocation shall be used only by the Applicant and only for the issuance of the Bonds for the Project, as described in Exhibit A. The terms and conditions of Exhibit A are incorporated herein as though set forth in full (this resolution, together with Exhibit A are hereafter referred to collectively as this "Resolution").

**Section 2.** The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds. The Project Sponsor and the Applicant, and all of their respective successors and assignees, shall be bound by those terms and conditions. The Applicant shall monitor the Project for compliance with the terms and conditions of this Resolution. The Project shall be subject to the monitoring provisions of California Code of Regulations, title 4, sections 10337(c) and 5220.

**Section 3.** A modification to the Project made prior to the issuance of the Bonds that impacts the Resolution shall be reported to the Executive Director and, if the Executive Director determines that modification to be material pursuant to CDLAC's statutes and regulations, the material modification shall be brought back to CDLAC for consideration before the Allocation may be used for the Project. After the Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by CDLAC through an action for specific performance or other available remedy.

In addition, after the Bonds are issued, a change to any of the Items of Exhibit A shall require CDLAC or Executive Director approval for the term of the commitment.

**Section 4.** A material change in the structure of the Bonds sale prior to the issuance of the Bonds and not previously approved by CDLAC shall require approval of the CDLAC Chair or the Executive Director.

**Section 5.** The transfer of the proceeds from the sale of the Bonds to a project other than the Project may be allowed only with the prior approval of the Executive Director in consultation with the CDLAC Chair.

**Section 6.** The Applicant is authorized to use the Allocation to make a carryforward election with respect to the Project. The Applicant is not authorized to transfer the Allocation to any governmental unit in the State except to CDLAC.

**Section 7.** If the Applicant has not issued the Bonds pursuant to the Allocation by the close of business on June 30, 2025, the Applicant shall notify CDLAC and carry forward the Allocation to the next approved project to be awarded a bond allocation pursuant to California Code of Regulations, title 4, section 5133. The Executive Director may extend this date by up to ninety (90) days if the extension is needed due to circumstances outside the control of the owner.

**Section 8.** Within twenty-four (24) hours of using the Allocation to issue the Bonds, the Applicant shall notify CDLAC at [CDLAC@treasurer.ca.gov](mailto:CDLAC@treasurer.ca.gov) that the Allocation has been used. This notice shall identify the Applicant, the Project or qualified residential rental project, the date the Allocation was used, and the amount of the Allocation used.

**Section 9.** Within fifteen (15) calendar days of the Bonds closing, the Applicant or its counsel shall submit a completed "Report of Action Taken Regarding the Issuance of Private Activity Bonds", as made available by CDLAC.

**Section 10.** Differences between the amount of the Bonds issued and the amount of the Allocation granted in Section 1 shall be retained by the Applicant as required by 26 U.S.C. §146(f)(3)(A) regarding carryforward elections. The use of a Carryforward Allocation shall be consistent with California Code of Regulations, title 4, section 5133.

**Section 11.** CDLAC staff is directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain a copy in the Applicant's official records for the term of the Bonds or the term of the income and rental restrictions, whichever is longer. CDLAC staff shall retain a copy of this Resolution in the files of CDLAC, or any successor agency, for the same term.

**Section 12.** In consideration of the Allocation, the Applicant and Project Sponsor shall comply with all the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. The Applicant and Project Sponsor shall expressly agree that the terms and conditions of this Resolution may be enforced by CDLAC through an action for specific performance or any other available remedy, provided CDLAC agrees not to take any action or enforce any remedy that would be materially adverse to the interests of Bondholders. The Applicant and Project Sponsor shall ensure the Bond documents, as appropriate, expressly state CDLAC is a third-party beneficiary of the terms and conditions set forth in this Resolution.

**Section 13.** Either the "Certification of Compliance II for Qualified Residential Rental Projects" or "Certification of Compliance II for Non-Qualified Residential Rental Projects" shall be submitted by the Project Sponsor to the Applicant no later than March 1st annually until the Project's applicable "Certificate of Completion" has been submitted by the Project Sponsor to the Applicant. An "Annual Applicant Public Benefits and Ongoing Compliance Self-Certification" shall be annually submitted online by the Applicant to CDLAC until the applicable "Certificate of Completion" has been submitted by the Project Sponsor to the Applicant. Following the submission of the applicable "Certificate of Completion" to the Applicant, the applicable "Certification of Compliance II" shall be submitted by the Project Sponsor to the Applicant no later than March 1st, and no later than March 1st every three years thereafter, pursuant to California Code of Regulations, title 4 section 5144. Verification to CDLAC of income and rental information shall not be required prior to the submission of the applicable "Certificate of Completion." A copy of the applicable "Certification of Compliance II" may be found at: <http://www.treasurer.ca.gov/cdlac/forms.asp>. Failure to submit compliance documents may result in disqualification from future participation for qualified residential rental projects.

**RESOLUTION NO. 24-284**

Page 3 of 3

**Section 14.** All relevant bond documents for the Bonds shall permit principal payments or prepayments on the underlying loan(s) as transferred proceeds in a bond preservation and recycling program as permitted by 26 U.S.C. 146(i)(6) and shall require no less than thirty (30) days' notice to CDLAC and the Applicant prior to the redemption of the Bonds at conversion to permanent financing.

**Section 15.** This Resolution shall take effect immediately upon its adoption.

\* \* \*

**CERTIFICATION**

I, Marina Wiant, Interim Executive Director of the California Debt Limit Allocation Committee, hereby certify that the above is a full, true, and correct copy of the Resolution adopted at a meeting of the Committee held in the Paul Bonderson Building, 901 P Street, 1st Floor, Sacramento, California 95814, on December 11, 2024 with the following votes recorded:

AYES: State Treasurer Fiona Ma, CPA  
Michele Perrault for Governor Gavin Newsom  
State Controller Malia M. Cohen

NOES: None  
ABSTENTIONS: None  
ABSENCES: None



Marina Wiant, Interim Executive Director

Date: December 11, 2024



**RESOLUTION NO. 24-284**

**QUALIFIED RESIDENTIAL RENTAL PROJECT  
EXHIBIT A**

1. Applicant: City and County of San Francisco
2. Application No.: 24-767
3. Project Sponsor: 160 Freelon Housing Partners, L.P. (Related/160 Freelon Development Co., LLC; SFHDC 160 Freelon LLC)
4. Property Management Co.: Related Management Company
5. Project Name: 160 Freelon
6. Location: San Francisco, CA
7. Private Placement Purchaser: **Citibank, N.A.**  
Cash Flow Bond: **Not Applicable**

All units identified in the CDLAC resolution, including both the Federally Bond-Restricted Units and the Other Restricted Units, will be incorporated into the Bond Regulatory Agreement. Assumptions to be included in the Bond Regulatory Agreement regarding the Other Restricted Units will include the AMI as outlined in the CDLAC resolution, a limitation that tenants pay no more than 30% of their income and 1.5 persons per bedroom occupancy standard to determine the applicable rent.

**Applicable**

8. Public Sale: **Not Applicable**  
Credit Enhancement Provider: **Not Applicable**
9. Total Number of Units: **84** plus **1** unrestricted manager unit(s)
10. Total Number of Restricted Tenant Rental Units: **84**
11. The term of the income and rental restrictions for the Project will be at least 55 years from the date 50% occupancy is achieved or when the project is otherwise placed in service.
12. The Regulatory Agreement shall not terminate prior to the end of the CDLAC Resolution affordability term in the event of foreclosure, exercise of power of sale, and/or transfer of title by deed in lieu of foreclosure in connection with a deed of trust directly or indirectly securing the repayment of Cash Flow Permanent Bonds.
13. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations.

## RESOLUTION NO. 24-284

### Exhibit A

Page 2 of 4

14. Income and Rental Restrictions

a. Federally Bond-Restricted Set-aside:

At least 40% of the total units will be restricted at 60% of the Area Median Income.

b. Other Restricted Units

For the entire term of the income and rental restrictions, the Project will have:

**66** Qualified Residential units rented or held vacant for rental for persons or families whose income is at or below 50% of the Area Median Income.

**18** Qualified Residential units rented or held vacant for rental for persons or families whose income is between 51% to 60% of the Area Median Income.

15. In accordance with Section 5191(a), a minimum of ten percent (10%) of the units must be restricted to households with incomes no greater than 50% of the Area Median Income and will be distributed as follows:

**Applicable:**

Studios:	<b>1</b>
One-bedroom:	<b>2</b>
Two-bedroom:	<b>3</b>
Three-bedroom:	<b>3</b>

16. New Construction Pool Set-aside Requirements.

Homeless Set-aside: at least 25% of the Tax Credit Units are designated for homeless households as defined by CTCAC Regulation Section 10315(b)(1)-(4) with affordable rents consistent with Section 10325(g)(3).

**Not Applicable**

Homeless Set-aside Priority: 45% of the Tax Credit Units are designated for homeless households as defined by CTCAC Regulation Section 10315(b)(1)-(4) with affordable rents consistent with Section 10325(g)(3).

**Not Applicable**

Extremely Low Income/Very Low Income (ELI/VLI) Set-aside. The rent and income targeting restrictions must have an average of 50% area median income (AMI) or below.

**Not Applicable**

Mixed Income Set-aside. A Mixed Income Project is a New Construction Qualified Residential Rental Project which either (1) is not utilizing the Average Income test of Internal Revenue Code Section 42 (g)(1)(C) and which has 50% or fewer of its total units designated as Restricted Rental Units or; (2) is part of the California Housing Finance Agency Mixed-Income Program. In a Competitive Application Process, a Mixed Income Project may only apply for an allocation of tax-exempt bonds if the ratio of tax-exempt bonds, not including recycled bonds, to aggregate depreciable basis plus land basis is less than or equal to the ratio of units that will be restricted pursuant to a CTCAC regulatory agreement.

**Not Applicable**

17. Minimum construction standards pursuant to CDLAC Regulation Section 5205 and Sections 10325(f)(7)(A) through (J) of the CTCAC Regulations will be incorporated into the project design for all new construction and rehabilitation projects.

**Applicable**

18. For all Acquisition & Rehabilitation projects, a minimum of \$15,000 in hard construction costs will be expended for each unit.

**Not Applicable**

**RESOLUTION NO. 24-284**

**Exhibit A**

Page 3 of 4

19. Other Rehabilitation Pool Requirements. The Project will comply with the requirement to complete rehabilitation work at a minimum of \$60,000 in hard construction cost per unit as defined in CTCAC Regulation Section 10302(u), subject to the provisions of Internal Revenue Code Section 42(e)(3)(A)(ii)(I), expended only on immediate health and safety improvements, seismic and accessibility improvements and/or the replacement of major systems with a remaining useful life of less than ten years pursuant to CDLAC Regulation Section 5170.

**Not Applicable**

20. The Project will comply with the Preservation and Other Rehabilitation Project Priorities of Section 5230(b). At a minimum, the Project must continue to meet the criteria sufficient to retain 0 points.

**Not Applicable**

21. The Project will comply with the New Construction Density and Local Incentives of Section 5230(c). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.

**Applicable**

22. The Project will comply with the Exceeding Minimum Income Restrictions of Section 5230(d). At a minimum, the Project must continue to meet the criteria sufficient to retain 20 points.

**Applicable**

23. The Project will comply with the Exceeding Minimum Rent Restrictions of Section 5230(e). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.

**Applicable**

24. The Project will comply with the General Partner Experience requirements of Section 5230(f)(1). At a minimum, the Project must continue to meet the criteria sufficient to retain 7 points.

**Applicable**

25. The Project will comply with the Management Company Experience requirements of Section 5230(f)(2). At a minimum, the Project must continue to meet the criteria sufficient to retain 3 points.

**Applicable**

26. The Project will comply with the New Construction Housing Type requirement of Section 5230(g). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points as a Large Family housing type.

**Applicable**

27. The Project will comply with the Leveraged Soft Resources requirements of Section 5230(h). At a minimum, the Project must continue to meet the criteria sufficient to retain 8 points.

**Applicable**

28. The Project will comply with the Readiness to Proceed requirements of Sections 5152 and 5230(i). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.

**Applicable**

29. The Project will comply with the Affirmatively Furthering Fair Housing requirements of Section 5230(j)(1)(A). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 points.

**Not Applicable**

## **RESOLUTION NO. 24-284**

### **Exhibit A**

Page 4 of 4

30. The Project will comply with the Affirmatively Furthering Fair Housing requirements of Section 5230(j)(1)(B). At a minimum, the Project must continue to meet the criteria sufficient to retain 9 points.

**Applicable**

31. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents high speed internet service in each Project unit free of charge (minimum average download speed 25 megabits/second).

**Not Applicable**

- 32a. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents a Service Coordinator. Service Coordinator responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants to access services through referral and advocacy, and (c) organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

**Applicable**

**Hours per Year: 527**

- 32b. For a period of fifteen (15) years after the Project is placed in use, the Project will provide residents instructor-led adult educational, health and wellness, or skill building classes. This includes, but is not limited to: Financial literacy, computer training, home-buyer education, GED classes, and resume building classes, ESL, nutrition class, exercise class, health information/awareness, art class, parenting class, on-site food cultivation and preparation classes, and smoking cessation classes. Drop-in computer labs, monitoring or technical assistance shall not qualify.

**Applicable**

**Hours per Year: 60**

34. The Project will comply with the Cost Containment requirements of Section 5230(l). At a minimum, the Project must continue to meet the criteria sufficient to retain 12 points.

**Applicable**

35. As specified in Section 5144(c) of the Committee's Regulations, sponsors will be required to utilize CTCAC's Compliance Manual specifically Section VI: Qualify Tenants for Low Income Housing Tax Credit Units, to verify tenant income in conjunction with initial occupancy. No less than every three (3) years after the project is completed, the Sponsor must collect and retain the following income and verification documentation related to all the Federally Bond-Restricted units identified in the Committee Resolution: CTCAC Tax Income Calculation (TIC) or equivalent documentation, all associated source income documentation, evidence of the verifying income computation and unit lease.

**Applicable**

36. As specified in Section 5144(d) of the Committee's Regulations, compliance with the income and rental requirements of the Federally Bond-Restricted Units identified in the Committee Resolution and the Bond Regulatory Agreement must be demonstrated by the Applicants initial review of 20% of all management files associated with the Federally Bond-Restricted units and subsequent review every three years of 20% of all management files associated with the Federally Bond-Restricted units.

**Applicable**

37. As specified in Section 5144(e) of the Committee's Regulations, applicants are required to ensure an onsite inspection as well as an on-site review of the 20% Federally Bond-Restricted units is performed every 3 years after the Qualified Project Period has commenced.

The following entity will conduct the site and file inspections:

**Not Applicable**

STATE OF CALIFORNIA  
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE  
901 P Street, Suite 213A  
Sacramento, CA 95814  
(916) 653-3255

**FILING FEE INVOICE**

**PAYMENT IS DUE WITHIN 30 DAYS OF BOND CLOSING**

Date: December 11, 2024

Application No.: 24-767

Analyst Initials: JS

To: William Wilcox  
Bond Program Manager  
City and County of San Francisco  
1 South Van Ness, 5th Floor  
San Francisco, CA 94103

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***2nd Installment of fee levied pursuant to Section 8869.90 of the California Government Code:***

NAME OF ISSUER: City and County of San Francisco

NAME OF PROJECT: 160 Freelon

ALLOCATION AWARD DATE: December 11, 2024

ALLOCATION AWARD AMOUNT: \$48,900,000

AMOUNT DUE: Allocation award x .00035 = \$ 17,115.00

**If the amount of allocation used is less than the amount of allocation awarded**

To determine the revised amount due, complete the following ***only if*** the amount of allocation used is less than the amount of allocation awarded, and remit the ***revised*** amount due. The application fee is based on the amount of allocation used to issue bonds.

REVISED AMOUNT DUE: Amount issued x .00035 = \$

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**How to Make a Payment**

**If paying by Check**

Make sure the Check has:

- Project Name and Application Number
- CDLAC as Payee
- Amount Due or Revised Amount Due (see above)

*Send Check to Address listed above with this Invoice.*

**If paying Online**

- Go to: [www.treasurer.ca.gov/CDLAC/payment](http://www.treasurer.ca.gov/CDLAC/payment)

# Exhibit W

Form of Section 5852.1 Disclosure Form

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## PUBLIC DISCLOSURES RELATING TO CONDUIT REVENUE OBLIGATIONS

Pursuant to California Government Code Section 5852.1, the borrower identified below (the “Borrower”) has provided the following required information to the City and County of San Francisco (the “City”) prior to the City’s regular meeting (the “Meeting”) of its Board of Supervisors (the “Board”) at which Meeting the Board will consider the authorization of conduit revenue obligations (the “Note”) as identified below.

1. Name of Borrower: 160 Freelon Housing Partners, L.P.

2. Board of Supervisors Meeting Date: May 20, 2025

3. Name of Note Issue/Conduit Revenue Obligations:

City and County of San Francisco, California  
Multifamily Housing Revenue Notes  
(160 Freelon)  
Series 2025D-1 and Series 2025D-2 (Taxable)

4. ☒ Private Placement Lender or Note Purchaser, ☐ Underwriter or ☒ Financial Advisor (mark one) engaged by the Borrower from which the Borrower obtained the following required good faith estimates relating to the Note:

(A) The true interest cost of the Note, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the new issue of Note (to the nearest ten-thousandth of one percent):

6.980% is the estimated permanent loan rate as of 4/22/25. Final loan rate will be set a few days prior to the closing date, estimated at 06/10/2025. Rate during construction is variable.

(B) The finance charge of the Note, which means the sum of all fees and charges paid to third parties:

Approximately \$1,110,000, including but not limited to a 0.750% origination fee on the entire construction loan (tax-exempt and taxable) and the bond issuance fees during construction equaling 0.125% per year of the construction loan balance.

(C) The amount of proceeds received by the public body for sale of the Note less the finance charge of the Note described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of the Note:

Approximately \$47,790,000 equaling the tax-exempt bond total of \$48,900,000 less the finance charges described above.

(D) The total payment amount, which means the sum total of all payments the Borrower will make to pay debt service on the Note plus the finance charge of the Note described in subparagraph (B) not paid with the proceeds of the Note (which total payment amount shall be calculated to the final maturity of the Note):

Approximately \$10,675,400 equaling (1) the finance change described above of \$1,110,000, (B) the tax-exempt construction loan interest through perm conversion of

## **Exhibit W**

Form of Section 5852.1 Disclosure Form

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approximately \$6,040,400, (C) the tax-exempt permanent loan debt service through year 17 totaling approximately \$3,525,000.

This document has been made available to the public at the Meeting of the Board.

Dated: April 22, 2025



May 7, 2025

Budget & Finance Committee  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102  
Re: 160 Freelon – File #250462  
Letter of Support

Dear Supervisors Chan, Dorsey, and Engardio:

Please consider this letter as support for the 160 Freelon project located on 160 Freelon Street, San Francisco, CA 94107 on behalf of the LEATHER & LGBTQ Cultural District.

The LEATHER & LGBTQ Cultural District believes the Leather and LGBTQ community is an integral part of the fabric of San Francisco and worthy of celebration. We exist to ensure there is a lively and vibrant home for our community of events, businesses, bars and organizations in SOMA.

For many years, residents of SOMA have been displaced by large developments with costs far beyond their means. As more and more artists, workers, and performers are priced out of the neighborhood, many becoming unhoused, unstably housed, or moving to other areas of the city or in other Bay Area communities. Affordable housing with wrap-around services such as the 160 Freelon project are needed to stem the exodus out of SOMA and stabilize the vibrant community the neighborhood has historically been.

We have attended presentations by the 160 Freelon development staff and have been impressed by their careful consideration of the needs of vulnerable populations to not only survive but thrive. The units set aside for the currently unhoused and HIV+ populations reflect their diligence in addressing their specific needs.

We urge you to move the 160 Freelon project forward and support the goals of the SOMA neighborhood to become an even more vibrant, thriving community. Thank you for your consideration.

Sincerely,

Bob Goldfarb  
Executive Director  
LEATHER & LGBTQ Cultural District





5/13/25

Re: Support for 160 Freelon (File #250461 and #250462)

Supervisors Chan, Dorsey, and Engardio,

SOMA Pilipinas is in support of the affordable housing project at 160 Freelon that will provide much needed affordable housing for the South of Market community. We urge you to support the resolutions before you tomorrow for this project.

SOMA Pilipinas was created to fight against the displacement of the Filipino community in the South of Market. The cultural district strongly advocates for community development that supports the needs of low-income residents and families, such as 100% affordable housing. SOMA Pilipinas also strives to create a neighborhood that visually reflects the heritage and history of the Filipino community through art, design, and public realm improvements.

The 160 Freelon project is located within the SOMA Pilipinas Filipino Cultural Heritage District. The project provides housing that is affordable, and more than half of the units are family sized 2-3 bedrooms apartments. SOMA Pilipinas looks forward to working with the project sponsor on incorporating the history and heritage of the cultural district into the design and public art components of the building.

We are glad to see the 160 Freelon project moving forward, especially when the vast majority of 100% affordable housing projects tied to the Central SOMA plan have stalled out. We look forward to this addition of much needed 100% affordable housing in the neighborhood and ask that the Board support the 160 Freelon project.

Thank you,

David Woo  
Community Development and Policy Coordinator  
SOMA Pilipinas



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 250462

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Jennifer Collins	415-244-3243
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
MYR Mayor's Office of Housing & Comm Dev	jennifer.m.collins@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> 160 Freelon Housing Partners, L.P.	<b>TELEPHONE NUMBER</b> 925-876-6348
<b>STREET ADDRESS (including City, State and Zip Code)</b> 18201 Von Karman Ave, Ste 900, Irvine, CA 92612	<b>EMAIL</b> ssheaff@related.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 250462
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> Not to Exceed \$76,000,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Tax-exempt and taxable multifamily housing revenue bond financing for the construction of 160 Freelon LIHTC project consisting of 84 affordable units plus 1 manager unit.		

7. COMMENTS
160 Freelon Housing Partners, L.P. consists of Related California Affordable and San Francisco Housing Development Corporation entities.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

# 9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Witte	William	CEO
2	Silverberg	Ann	CEO
3	Cardone	Frank	Other Principal Officer
4	Sobel	David	CEO
5	Green	Howard	CFO
6	Sherman	Steve	CFO
7	Robinson	Lena	Board of Directors
8	Wong	Daniel	Board of Directors
9	Golvin	Ben	Board of Directors
10	McGill	Antoinette	Board of Directors
11	Turner	Chuck	Board of Directors
12	Walker	Eddie	Board of Directors
13	Ramirez	Josie	Board of Directors
14	Eskildsen	Jennifer	Board of Directors
15	Mkondiwa	Cecilia	Board of Directors
16	Jeng	Melissa	Board of Directors
17	Zha	Fanny	Board of Directors
18	Talley-Gage	April	Board of Directors
19			

**9. AFFILIATES AND SUBCONTRACTORS**

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b>	<b>DATE SIGNED</b>
BOS Clerk of the Board	



TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Adam Thongsavat, Liaison to the Board of Supervisors  
RE: [Multifamily Housing Revenue Notes – 160 Freelon ("160 Freelon") - Not to Exceed \$76,000,000]  
DATE: April 29, 2025

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Resolution authorizing the execution and delivery of multifamily housing revenue notes in one or more series in an aggregate principal amount not to exceed \$76,000,000 for the purpose of providing financing for the construction of an 85-unit multifamily rental housing project known as "160 Freelon"; approving the form of and authorizing the execution of a funding loan agreement providing the terms and conditions of the construction loan from the construction funding lender identified therein to the City and for the execution and delivery of the construction note; approving the form of and authorizing the execution of a borrower loan agreement providing the terms and conditions of the construction loan from the City to the borrower; approving the form of and authorizing the execution of an amended and restated funding loan agreement providing the terms and conditions of the permanent loan from the permanent funding lender to the City and for the execution and delivery of the permanent note; approving the form of and authorizing the execution of an amended and restated borrower loan agreement providing the terms and conditions of the permanent loan from the City to the borrower; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; authorizing the execution of an assignment of deed of trust and related documents; authorizing the collection of certain fees; approving, for purposes of the Internal Revenue Code of 1986, as amended, the execution and delivery of federally tax-exempt residential mortgage revenue notes by the City in an aggregate principal amount not to exceed \$48,900,000; approving modifications, changes and additions to the documents; ratifying and approving any action heretofore taken in connection with the back-to-back loans, the notes and the project; granting general authority to City officials to take actions necessary to implement this Resolution; and related matters.

Should you have any questions, please contact Adam Thongsavat at [adam.thongsavat@sfgov.org](mailto:adam.thongsavat@sfgov.org)