

File No. 230317

Committee Item No. 9

Board Item No. 21

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 5, 2023

Board of Supervisors Meeting Date April 11, 2023

#### Cmte Board

- |                                     |                                     |  |
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| <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 type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input 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>Draft Funding Loan Agreement</u>                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Draft Project Loan Agreement</u>                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DRAFT Regulatory Agreement (Site I - Block 52)</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DRAFT Regulatory Agreement (Site II - Block 54)</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Project Description</u>                             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Public Disclosure Report</u>                        |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CDLAC Resolution No. 22-237 11/30/2022</u>          |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Certification of Publication 12/13/2022</u>   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Notice Proof of Publication 12/14/2022</u>    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Hearing Minutes 12/13/2022</u>                |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MOHCD Presentation 4/5/2023</u>                     |

Completed by: Brent Jalipa Date March 30, 2023

Completed by: Brent Jalipa Date April 5, 2023

1 [Multifamily Housing Revenue Note - Hunters Point Shipyard Block 52-54 - 151 and 351  
2 Friedell Street - Not to Exceed \$63,000,000]

3 **Resolution approving for purposes of the Internal Revenue Code of 1986, as amended,**  
4 **and authorizing the execution and delivery of a multifamily housing revenue note in**  
5 **one or more series in an aggregate principal amount not to exceed \$63,000,000 for the**  
6 **purpose of providing financing for the acquisition and construction of a 112-unit**  
7 **multifamily rental housing project located at 151 and 351 Friedell Street; approving the**  
8 **form of and authorizing the execution of a funding loan agreement; providing the terms**  
9 **and conditions of the loan from the funding lender to the City, and the execution and**  
10 **delivery of the note; approving the form of and authorizing the execution of a project**  
11 **loan agreement; providing the terms and conditions of the loan from the City to the**  
12 **Borrower; approving the form of and authorizing the execution of two regulatory**  
13 **agreements and declaration of restrictive covenants; authorizing the collection of**  
14 **certain fees; approving modifications, changes, and additions to the documents;**  
15 **ratifying and approving any action heretofore taken in connection with the back-to-**  
16 **back loans, the note and the project; granting general authority to City officials to take**  
17 **actions necessary to implement this Resolution, as defined herein; and related matters,**  
18 **as defined herein.**

19  
20 WHEREAS, The Board of Supervisors (the "Board") of the City and County of San  
21 Francisco desires to provide for the financing of a portion of the costs of the acquisition and  
22 construction by HPSY 52-54, LP, a California limited partnership (the "Borrower"), of a  
23 112-unit (including two managers' units) residential rental development project located at  
24 151 and 351 Friedell Street, in San Francisco, California, known as "Hunters Point Shipyard  
25 Block 52-54" (the "Project"), to provide housing for persons and families of low and very-low

1 income (as such terms are defined by the City) through the execution and delivery of a  
2 multifamily housing revenue note in one or more series (collectively, the “Note”); and

3 WHEREAS, The City is authorized to execute and deliver revenue notes for such  
4 purpose pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code  
5 of the City and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with  
6 Section 52075) of the Health and Safety Code of the State of California (“Health and Safety  
7 Code”), as now in effect and as it may from time to time hereafter be amended or  
8 supplemented (collectively, the “Act”); and

9 WHEREAS, The interest on the Note may qualify for tax exemption under Section 103  
10 of the Internal Revenue Code of 1986, as amended (the “Code”), only if the Note is approved  
11 in accordance with Section 147(f) of the Code; and

12 WHEREAS, The Board is the elected legislative body of the City and is the applicable  
13 elected representative authorized to approve the execution and delivery of the Note within the  
14 meaning of Section 147(f) of the Code; and

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

16 WHEREAS, On December 5, 2022, the City caused a notice stating that a public  
17 hearing with respect to the issuance of multifamily affordable housing mortgage revenue bond  
18 issues would be held by the Mayor’s Office of Housing and Community Development  
19 (“MOHCD”) on December 13, 2022, to be published and appear in the Notices section of the  
20 MOHCD’s website (at <https://sf.gov/information/mochd-department-notices>), which is on file  
21 with the Clerk of the Board of Supervisors and incorporated herein by reference; and

22 WHEREAS, At the date and time and the location specified in such notice the MOHCD  
23 held such public hearing at which an opportunity was provided for persons to comments on  
24 the issuance of the Note and the Project; and

1           WHEREAS, On November 30, 2022, the California Debt Limit Allocation Committee  
2 (“CDLAC”) in its Resolution No. 22-237, allocated an amount not to exceed \$63,000,000 in  
3 qualified private activity volume cap to the Project; and

4           WHEREAS, There has been prepared and presented to the Board for consideration at  
5 this meeting the documentation required for the execution and delivery of the Note, and such  
6 documentation is on file with the Clerk of the Board of Supervisors (the “Clerk of the Board”);  
7 and

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

11           WHEREAS, The Board finds that public interest and necessity require that the City at  
12 this time make arrangements for the funding loan, the project loan, and the execution and  
13 delivery of the Note; and

14           WHEREAS, The Note will be a limited obligation of the City, the sole source of  
15 repayment of which shall be payments made by the Borrower under the Project Loan  
16 Agreement (hereinafter defined), together with investment income, if any, of certain funds and  
17 accounts held under the Funding Loan Agreement (hereinafter defined); and

18           WHEREAS, The City has engaged Kutak Rock LLP, as bond counsel with respect to  
19 the Bond (“Bond Counsel”); and

20           WHEREAS, Bank of America, N.A., a national banking association (or an affiliate  
21 thereof) (the “Funding Lender”) has expressed its intention to make the funding loan, to be  
22 evidenced by the Note, to the City; now, therefore, be it

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

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

3           Section 2. Approval of Issuance of Execution and Delivery of Note. The Board, as  
4 the applicable elected representative of the governmental unit having jurisdiction over the  
5 area in which the Project is located, hereby approves the issuance of the Note, pursuant to a  
6 plan of financing, for purposes of Section 147(f) of the Code. Additionally, in accordance with  
7 the Act, the Funding Loan Agreement and the Project Loan Agreement, the City is hereby  
8 authorized to execute and deliver a note or notes in one or more series designated as “City  
9 and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point  
10 Shipyard Block 52-54) Series 2023B” or such additional or other designation as may be  
11 necessary or appropriate to distinguish such series from every other series of bonds or notes,  
12 in an aggregate principal amount not to exceed \$63,000,000, with an interest rate not to  
13 exceed twelve percent (12%) per annum for the Note, and which shall have a final maturity  
14 date of not later than forty (40) years from the date of execution and delivery of the Note. The  
15 Note shall be in the form set forth in and otherwise in accordance with the Funding Loan  
16 Agreement and shall be executed by the manual or facsimile signature of the Mayor of the  
17 City (the “Mayor”).

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

1 execute the Funding Loan Agreement, approved as to form by the City Attorney of the City  
2 (the "City Attorney"), in substantially said form, together with such additions thereto and  
3 changes therein as the City Attorney and Bond Counsel may approve or recommend in  
4 accordance with Section 7 hereof.

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

12 Section 5. Approval of Regulatory Agreement and Declaration of Restrictive  
13 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants  
14 (collectively, the "Regulatory Agreement" and, together with the Funding Loan Agreement and  
15 the Project Loan Agreement, the "City Documents"), between the City and the Borrower, in  
16 the forms presented to the Board, copies of which are on file with the Clerk of the Board, is  
17 hereby approved. Each Authorized City Representative is hereby authorized to execute the  
18 Regulatory Agreement, approved as to form by the City Attorney, in substantially said forms,  
19 together with such additions thereto and changes therein as the City Attorney and Bond  
20 Counsel may approve or recommend in accordance with Section 7 hereof.

21 Section 6. Issuer Fees. The City, acting through MOHCD, shall charge an annual  
22 fee for monitoring compliance by the Borrower with certain provisions of the Regulatory  
23 Agreement in an amount not to exceed one-eighth of one percent (0.125%) of the average  
24 outstanding principal amount of the Note in the previous twelve (12) months (the "Annual  
25 Fee"). When the Note has been paid in full, the Annual Fee will revert to an annual amount of

1 \$2,500 for the duration of the term of the Regulatory Agreement. The Annual Fee shall be  
2 payable upon each anniversary of the execution and delivery of the Note. The Board hereby  
3 authorizes MOHCD to charge and collect the fees described in this section. Notwithstanding  
4 the foregoing provisions of this Section, MOHCD is authorized to charge an Issuance Fee or  
5 Annual Fee, or both, that is or are lower than or that are collected on a different schedule than  
6 the fees prescribed in this Section 6, if upon the advice of Bond Counsel, lower fees are  
7 necessary or advisable to ensure that the Note does not become an “arbitrage bond” within  
8 the meaning of Section 148 of the Code, or to ensure that interest on the Note does not  
9 become includable in gross income for federal income tax purposes under Section 103 of the  
10 Code.

11 Section 7. Modifications, Changes, and Additions. Any Authorized City  
12 Representative executing the City Documents, in consultation with the City Attorney and Bond  
13 Counsel, is hereby authorized to approve and make such modifications, amendments,  
14 changes or additions to the City Documents as may be necessary or advisable, provided that  
15 such modification does not: (i) authorize an aggregate principal amount of the Note in excess  
16 of \$63,000,000; (ii) provide for a final maturity of the Note later than forty (40) years from the  
17 date of execution and delivery thereof; or (iii) provide for the Note to bear interest at a rate in  
18 excess of twelve percent (12%) per annum. The approval of any modification, addition or  
19 change to any of the aforementioned documents shall be evidenced conclusively by the  
20 execution and delivery of the document in question by an Authorized City Representative or a  
21 designee thereof.

22 Section 8. Ratification. All actions heretofore taken by the officers and agents of the  
23 City with respect to the funding loan and the execution and delivery of the Note consistent  
24 with the purposes of this Resolution and the City Documents are hereby approved, confirmed,  
25 and ratified.

1           Section 9. General Authority. The proper officers of the City (including the  
2 Authorized City Representatives or designees thereof) are hereby authorized and directed, for  
3 and in the name and on behalf of the City, to do any and all things and take any and all  
4 actions and execute and deliver any and all certificates (including, but not limited to, tax  
5 certificates), agreements (including agreements to provide adequate or additional security or  
6 indemnities as required by lenders to consummate the financing), and other documents and  
7 amendments, including but not limited to those documents described in the City Documents,  
8 which they, or any of them, may deem necessary or advisable in order to consummate the  
9 lawful execution and delivery of the Note and to effectuate the purposes thereof and of the  
10 City Documents in consultation with the City Attorney. Any such actions are solely intended to  
11 further the purposes of this Resolution, and are subject in all respects to the terms of this  
12 Resolution. No such actions shall increase the risk to the City or require the City to spend any  
13 resources not otherwise contemplated herein. Final versions of such documents (showing  
14 marked changes, if any) shall be provided to the Clerk of the Board for inclusion in the official  
15 file within thirty (30) days of execution by all parties.

16           Section 10. File. All documents referenced herein as being on file with the Clerk of  
17 the Board are located in File No. 230317, which is hereby declared to be a part of this  
18 Resolution as if set forth fully herein.



1            Section 11. Effectiveness. This Resolution shall take effect from and after its adoption  
2 by the Board and approval by the Mayor.

3  
4 APPROVED AS TO FORM:  
5 DAVID CHIU  
6 City Attorney

7 By: \_\_\_\_\_/s/  
8 Heidi J. Gewertz  
9 Deputy City Attorney



# HUNTERS POINT SHIPYARD BLOCKS 52 & 54

BUDGET AND FINANCE  
COMMITTEE

APRIL 5, 2023

JASMINE KUO, DEVELOPMENT SPECIALIST  
OFFICE OF COMMUNITY INVESTMENT  
AND INFRASTRUCTURE

# HUNTERS POINT SHIPYARD BLOCKS 52 & 54 BUDGET AND FINANCE COMMITTEE AGENDA ITEMS

File #230317: Note Issuance

Authorization to issue tax-exempt  
multifamily housing revenue note  
in an amount not to exceed **\$63M**

# HUNTERS POINT SHIPYARD & CANDLESTICK POINT



## BACKGROUND:

- Hunters Point Shipyard Phase I development program includes:
  - 1,428 units of housing (505 units built to date, including 102 inclusionary units on multiple blocks)
- OCII will fund 218 housing units on 5 stand-alone 100% affordable housing sites, including Blocks 52 & 54

## PROJECT HISTORY:

- 2021 – Jonathan Rose Companies & Bayview Hunters Point Multipurpose Senior Services selected as co-developers for Blocks 52 & 54
- 2021 & 2023 – OCII Permanent Loan financing approved by Citywide Affordable Housing Loan Committee and OCII Commission
- 2022 – Blocks 52 & 54 received tax-exempt bond allocation





## PROPOSED PROJECT

- 112 units (110 affordable+2 manager’s units)
  - 1 five-bedroom unit
  - 8 four-bedroom units
  - 23 three-bedroom units
  - 31 two-bedroom units
  - 49 one-bedroom units
- Community room & lounge area, landscaped courtyards & play area
- 30%-50% MOHCD AMI
- Co-developers: Jonathan Rose Companies and Bayview Hunters Point Multipurpose Senior Services

## PERMANENT FINANCING

Total Development Cost	\$132,880,642
▪ OCII	\$61,838,820
▪ Tax Credit Equity	\$61,915,175
▪ IIG	\$5,913,900
▪ Other	\$3,212,746

## TIMELINE

- Housing Construction Start: May 2023
- Construction Completion: April 2025
- Lease-up Completion: December 2025

THANK YOU

**FUNDING LOAN AGREEMENT**

among

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

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

and

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

relating to

Hunters Point Shipyard Block 52-54  
151 and 351 Friedell Street, San Francisco, California  
Maximum Funding Loan Principal Amount: \$[63,000,000]

Dated as of [\_\_\_\_\_] 1, 2023

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EXHIBIT E  
EXHIBIT F

FORM OF PROJECT LOAN FUND REQUISITION  
CITY AND COUNTY OF SAN FRANCISCO MANDATORY  
CONTRACTING PROVISIONS

## FUNDING LOAN AGREEMENT

**THIS FUNDING LOAN AGREEMENT** (this “Funding Loan Agreement”), is made and entered into and dated as of [\_\_\_\_\_] 1, 2023, 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, CALIFORNIA** (the “Governmental Lender”), a municipal corporation and chartered city and county, 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 Project Loan Agreement dated as of [\_\_\_\_\_] 1, 2023 (the “Project Loan Agreement”) by and among the Governmental Lender, the Fiscal Agent and HPSY 52-54, LP, a 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 \$[63,000,000] (the “Project Loan”) to provide for the financing of the construction, development and equipping of a 112-unit (including two manager units) scattered site multifamily rental housing development located at 151 and 351 Friedell Street within the City and known or to be known as “Hunters Point Shipyard Block 52-54” (the “Project”).

D. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the tax-exempt loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum principal amount of \$[63,000,000] (the “Funding Loan” and together with the Project Loan, the “Loans”). The Funding Loan is evidenced by the

Governmental Note dated the Delivery Date in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the “Governmental Note”) 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 Disbursement Agreement (as defined herein), 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 Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.

F. The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and construction of the Project.

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

H. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Leasehold Construction Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the [Delivery Date] (as more particularly defined herein, the “Security Instrument”) with respect to the Project, which Security Instrument, excluding the Unassigned Rights, will be assigned by the Governmental Lender to the Initial Funding Lender as security for the Funding Loan.

I. The Initial Funding Lender has entered into a commitment whereby the Initial Funding Lender has committed, subject to the satisfaction of the conditions to conversion (“Conditions to Conversion”) on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by converting the Project Loan to a permanent loan following the Conversion Date and thereafter transferring its interest in the Funding Loan to [IMPACT C.I.L., LLC, a Delaware limited liability company], or a party related thereto (the “Permanent Lender”).

J. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Construction Disbursement Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and the Project Loan will become due and payable.

K. In connection with the conversion of the Project from the Construction Phase to the Permanent Phase, the Borrower and the Initial Funding Lender will enter into a Permanent Loan Agreement, dated as of the Conversion Date, which shall replace the Construction Disbursement Agreement on the Conversion Date (the “Permanent Loan Agreement”) upon satisfaction of the

Conditions to Conversion, and the Project Note and the Security Instrument will be amended and restated in the forms set forth in the Construction Disbursement Agreement.

L. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and limited obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Note, have been duly taken, and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

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

N. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate 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 Project 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 now in effect and as it may from time to time hereafter be amended and supplemented.

“*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 Disbursement 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) December 31, 2026, (iii) the Conversion Date, (iv) the date of a Determination of Taxability or (v) the occurrence of an Event of Default hereunder.

“*Assignment*” means the Assignment of Deed of Trust and Related Documents dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Initial Funding Lender.

“*Authorized Amount*” shall mean \$[63,000,000], the maximum principal amount of the 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 authorized representative of a 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) Kutak Rock LLP 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 HPSY 52-54, LP, a 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 Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

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

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions or trust companies in New York, New York, San Francisco, California, 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, (ii) the New York Stock Exchange is closed, or (iii) with respect to actions to be taken by the Governmental Lender, a State holiday.

“*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 [Construction Disbursement Agreement].

“*Construction Disbursement Agreement*” means the [Construction Disbursement Agreement] dated as of the [Delivery Date] by and between the Borrower and the Servicer, as the same may be amended, modified or supplemented from time to time.

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

“*Construction Phase Interest Rate*” means the rate as provided in Section 3 of the Project Note.

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

“*Conversion*” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means the date the Conditions to Conversion have been satisfied, as determined by the Initial Funding Lender; provided that, unless extended in accordance with the terms hereof and the Construction Disbursement Agreement, the Conversion Date shall not occur later than [\_\_\_\_\_].

“*Cost*,” “*Costs*” or “*Costs of the Project*” means costs paid with respect to the Project that (i) are properly chargeable to a 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) sixty (60) days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the 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 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 or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (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 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 municipal 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 Servicer and Servicer’s counsel, (f) 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 Project 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 and/or the Title Company on the Delivery Date, which deposit shall be comprised of sources other than the proceeds of the Project Note.

“*Default Rate*” means the lower of (i) the “Default Rate” as defined in the Project Note, (ii) the Maximum Interest Rate.

“*Delivery Date*” means Closing Date, the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note 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 or (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 Governmental Note is includable in 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 Fiscal Agent’s Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*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 Project 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 Project 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 Project Loan Documents.

“*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.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents, the Initial Funding Lender 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*” means the later of (i) the Forward Commitment Maturity Date, or (ii) the Extended Forward Commitment Maturity Date, as such terms are defined in Section [2.1(b)] of the Construction Disbursement Agreement, subject to further extension in the Initial Funding Lender’s sole and absolute discretion.

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

“*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.

“*Funding Loan*” means the loan in the maximum aggregate principal amount of \$[63,000,000] made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender and evidenced by the Governmental Note.

“*Funding Loan Agreement*” means this Funding Loan Agreement, dated as of [\_\_\_\_\_] 1, 2023, 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 Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

“*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, California, a municipal corporation and chartered city and county, organized and existing under the laws of its City Charter and the Constitution and laws of the State.

“*Governmental Lender Fee*” means the ongoing fee of the Governmental Lender in connection with the making of the Project Loan in the amount set forth in Section 17 of the Tax Regulatory Agreement, subject to adjustment as set forth in the Tax Certificate.

“*Governmental Note*” means the City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Funding Lender and evidencing the Funding Loan, in the form attached hereto as Exhibit A, 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.

“*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 Project Loan (as provided in Section 4.02 of the Project 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 Funding Lender*” means Bank of America, N.A., a national banking association, as initial holder of the Governmental Note.

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

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing [\_\_\_\_\_] 1, 2023, (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 Project 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 [MATURITY DATE].

“*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.

“*Notes*” means, together, the Project Note and the Governmental Note.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Servicer to the Governmental Lender, the Fiscal Agent, the Initial Funding Lender and the Borrower (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 Initial Funding Lender (if a waiver is permitted) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Project Note and the 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 \$2,500 and shall be payable annually in advance on the Delivery Date and each [\_\_\_\_\_] 1 thereafter.

“*Permanent Lender*” means [IMPACT C.I.L., LLC, a Delaware limited liability company], or a party related thereto, and its permitted successors and assigns, provided such successor is a qualified institutional buyer or accredited investor satisfying the requirements of Section 2.08 hereof.

“*Permanent Loan*” has the meaning set forth in the Permanent Loan Agreement.

“*Permanent Loan Agreement*” means the Permanent Loan Agreement to be executed on the Conversion Date, between the Borrower and the Funding Lender, a form of which is attached as an exhibit to the Construction Disbursement Agreement.

“*Permanent Phase*” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the term of the Project 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 consisting of twelve 30-day months.

“*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 Project 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 Project Loan and the Funding Loan to the maximum principal amount of the Permanent Loan.

“*Prepayment Premium*” shall mean any premium payable, if any, in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under Section 4 of the Project Note, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section [2.03] of the Permanent Loan Agreement, in each case in connection with a prepayment of the Project 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, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known or to be known as Hunters Point Shipyard Block 52-54 located at 151 and 351 Friedell Street in San Francisco, California, including the real estate described in the Security Instrument, subject to the Ground Lease.

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

“*Project Loan*” has the meaning given such term in Recital A hereto.

“*Project Loan Agreement*” means the Project 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.

“*Project Loan Documents*” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

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

“*Project Loan*” the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$[63,000,000], as evidenced by the Project Note.

“*Project Note*” means the Promissory Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project 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 may be

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.

“*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) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) 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 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; (h)(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; (i) the pooled investment fund of the City and County of San Francisco; or (j) 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 (3) years; and at least “Aaa”/“AAA” for obligations with a maturity of three (3) 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 Transferee*” shall have the meaning given such term in Section 2.08(b) hereof.

“*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, the Tax Certificate and the Project Loan Agreement. The initial Rebate Analyst will be Kutak Rock LLP.

“*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 (5) 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 Governmental Note.

“*Requisition*” means, with respect to the Project 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 and/or the Borrower Equity Account of the Project 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 Project 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 Project Loan pursuant to the Project Loan Agreement, the Project Note 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.

“*Security Instrument*” means the Leasehold Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the [Delivery Date], by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Initial Funding Lender pursuant to the Assignment as security for the Funding Loan, as the same may be amended, supplemented or restated.

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

“*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 Project Loan Agreement. During the Construction Phase, the Servicer shall be Bank of America, N.A.. During the Permanent Phase, the Servicer shall be the Permanent Lender.

“*State*” means the State of California.

“*Subordinate Debt Document*” means any document or instrument executed by the Borrower to a third-party lender evidencing or setting forth terms of any financing for the Project which is subordinate to the Project Note and which has been approved by the Funding Lender.

“*Tax Certificate*” means the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 executed and delivered by the Governmental Lender and the Borrower on the Delivery Date, as such agreement may be amended, modified, supplemented and replaced from time to time.

“*Tax Regulatory Agreement*” means those two Regulatory Agreement and Declaration of Restrictive Covenants with respect to the Project, each dated as of the date hereof, between the Governmental Lender and the Borrower, as the same may be amended or supplemented from time to time.

“*Title Company*” means Mission Title Agency, LLC.

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

## 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 each advance 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 Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note 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 Disbursement Agreement. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the Governmental Note 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 in the amount of \$[\_\_\_\_\_] which amount shall be advanced by the Initial Funding Lender and deposited in the Project Account of the Project Loan Fund on the Delivery Date for application as provided in Section 2.11. 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 (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 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 “Schedule of Advances”). The principal amount due on the Governmental Note shall be only such amount as has been advanced by the Initial Funding Lender as reflected in the Schedule 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 if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Schedule of Advances.

(e) The Funding Loan shall mature on the Maturity Date, subject to scheduled monthly principal payments, and 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. The outstanding principal amount of the Governmental Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances under the Project Note and the Project Loan Agreement as proceeds of the Project Loan, less any payments of principal of the Governmental Note previously received from payments of corresponding principal amounts under the Project Note, including regularly scheduled principal payments and voluntary and mandatory prepayments.

(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 such 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 event shall the aggregate of all amounts constituting interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the Maximum Interest Rate. In the event that a court of competent jurisdiction shall, in a final, non-appealable determination, determine that 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 Note except to the extent such amount is due and payable under the Project Loan Agreement and the Project Note. In the event of any conflict as to the payment terms of the Governmental Note and the Project Note, the terms of the Project Note shall control and the terms of the Governmental Note shall be deemed amended thereby, provided that no such amendment shall increase the obligations of the Governmental Lender under the Funding Loan or the Governmental Note except to the extent payable solely from the Pledged Security. Further, no such amendment shall cause the Governmental Lender's obligations hereunder and under the Governmental Note 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 Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Funding Lender, 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 Project Loan Agreement, the Project Note, the Security Instrument and the other Project 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 Funding Lender, 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, Prepayment Premium, if any, and interest on the Governmental Note, in accordance with their respective 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 Funding Lender 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 Note; 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 Note are limited obligations of the Governmental Lender, payable solely from the Pledged Security. 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, Prepayment Premium (if any) or interest on the Funding Loan or the Governmental 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 Note or any of the Governmental Lender's agreements or obligations thereunder 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 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 Pledged Security provided therefor pursuant to this Funding Loan Agreement. The Funding Loan and the Governmental 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 Note 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 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 Note 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 Note shall be in substantially the form attached as Exhibit A and shall be delivered to the holder thereof in physical form and not as a book-entry bond. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Officer of the Governmental Lender. The signature of the individual who was the proper officer of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individual shall have ceased to hold such office prior to the delivery of the Governmental Note or shall not have held such office at the date of the Governmental Note. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06. Authentication.** The Governmental 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 Note, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has 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 that the 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, 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 the 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 the Governmental Note shall have matured, instead of delivering a new Governmental Note, the Fiscal Agent 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 Note, 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 Note, 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 Note, and any transfers of the Funding Loan, as evidenced by the Governmental Note, as provided herein, which books, with respect to the Funding Loan,

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 Note, shall initially be registered to the Initial Funding Lender. Upon the Conversion Date, the Governmental Note shall be registered to the Permanent Lender.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan and the Governmental Lender Note or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the original 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 (“QIB”), or the Permanent Lender (each, 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 of 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 shall not be sold or transferred except in initial amounts not less than \$250,000 in principal amount and only 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 Note. Notwithstanding any sale or other transfer of any participation interests in the Funding Loan, the Governmental Lender and the Fiscal Agent shall be entitled to consider the Funding Lender as the sole holder of such interests for purposes of exercising any right or discharging any obligation of the Funding Lender, or the giving or receiving of any notice, waiver, consent or similar action in respect of the Funding Lender.

(c) No service charge shall be made for any sale or assignment of any portion of the Funding Loan or the Governmental 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. No placement agent shall be involved in the issuance and sale of the Governmental Note.

(d) The Governmental Lender hereby consents to the transfer of the Governmental Note to the Permanent Lender upon the terms and at the times set forth in the Loan Purchase Agreement and acknowledges and agrees that no further consent or



approval of the Governmental Lender shall be required in connection with the transfer of the Governmental Note to the Permanent Lender as set forth thereunder.

**Section 2.09. [Reserved].**

**Section 2.10. Funding Loan Closing Conditions; Delivery of Governmental Note.**

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 Note and deliver the Governmental Note to the Initial Funding Lender upon receipt by the Fiscal Agent of the following:

(a) Executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) An opinion of Bond Counsel or counsel to the Governmental Lender substantially to the effect that the Governmental Lender is duly organized and existing under the laws of the State, the Governmental Note constitutes the valid and binding limited obligation of the Governmental Lender, this Funding Loan Agreement has been duly executed and delivered by the Governmental Lender, and the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, if applicable, for State income tax purposes, in each case subject to customary qualifications, assumptions, limitations and exclusions;

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

(d) The executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(e) A copy of the executed Security Instrument, the Assignment and the Construction Disbursement Agreement;

(f) 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, subject to applicable assumptions and qualifications;

(g) A certified copy of the Resolution;

(h) The written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial

Funding Lender upon funding to the Fiscal Agent of the initial advance of the Funding Loan;

(i) Receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement, if applicable;

(j) 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; and

(k) 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 Project 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 Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project 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 installments 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 Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Borrower shall deliver, from sources other than the Loans, (i) to the Title Company, on or prior to the Delivery Date, a deposit to cover Costs of Issuance Deposit which shall be disbursed to the Fiscal Agent for deposit in the Cost of Issuance Fund, 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, including but not limited to any amounts transferred from the Title Company following the Delivery Date. Amounts deposited in the Borrower Equity Account in the Project Loan Fund shall be disbursed upon the approval of the Servicer in accordance with the terms of the Construction Disbursement Agreement.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make the initial disbursements of amounts in the Project 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, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer; provided, however, during the Construction Phase, (i) the Fiscal Agent may make the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof, and (ii) the Funding Lender may fund draws on the Funding Loan directly to the Funding Lender, at the times, in the amounts and in payment of interest due on the Project Note, without requisition or approval from any other person, and such draws shall be deemed to be Funding Loan draws to fund corresponding draws on the Project Loan to the Borrower, and receipt by the Funding Lender thereof shall be deemed to be receipt of such payments of interest on the Project Loan by the Borrower to satisfy corresponding payments of interest on the Funding Loan. The Funding Lender shall promptly notify the Fiscal Agent and the Servicer in writing of the date and amount of any Funding Loan draws made directly to the Funding Lender for the payment of interest on the Project Note during the Construction Phase as aforesaid. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Fee to the Governmental Lender and shall remit the 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. 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 Project 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.

(b) If the Governmental Note is 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 Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made 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 deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be

obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative; provided, however, the Fiscal Agent may make debt service and fee payments out of the Project Loan Fund pursuant to Section 4.02 hereof during the Construction Phase. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project 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 Construction Disbursement Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur and neither the Servicer nor the Initial Funding Lender will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

### 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 in whole or in part upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions as and to the extent set forth in the Project Note.

(b) ***Funding Loan Mandatory Prepayment.*** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), 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 prepayment of the Project Loan pursuant to the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof;

(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 Project 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; or

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

Notwithstanding the foregoing, in the event the Servicer, not the Fiscal Agent, is collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

**Section 3.03. Recycling Transactions.** Notwithstanding any provision of this Funding Loan Agreement or the Governmental Note to the contrary, the Governmental Lender shall be permitted to direct Project 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 Note, so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of the Governmental Note. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

In connection with such recycling and Project Note prepayment, if so directed in a written direction of the Governmental Lender provided to the Fiscal Agent prior to any prepayment date, the Fiscal Agent is hereby authorized and directed to receive any such Project Note prepayment or amounts corresponding thereto and to hold such amounts, uninvested, for such period of time and to transfer such amounts to the Funding Lender, or to such custodian, fiscal agent or trustee designed by the Governmental Lender and specified in such written direction. For purposes of effectuating the foregoing, the Fiscal Agent is hereby authorized and directed to open and create such funds or accounts, which may be temporary in nature, as may be necessary or desirable, and to close such funds or accounts following the completion of the transfers set forth in such written direction.

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01. 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 Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery 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 Project Loan Fund (and the Project Account and subaccounts therein) 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 Pledge Security and be subject to the lien hereof.

#### **Section 4.02. Project Loan Fund.**

(a) ***Deposit.*** The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project 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 Project 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 Note), as provided in Section 2.11(c) hereof.

(b) ***Disbursements.*** Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of (i) paying interest on the Funding Loan and the Fee Component, in each case when due during the Construction Phase and (ii) paying Costs of the Project. In addition, amounts in the Project 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.*** If the Fiscal Agent is so instructed in writing by the Initial Funding Lender, the Fiscal Agent shall transfer amounts from the Borrower Equity Account of the Project 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. If the Fiscal Agent is so instructed in writing by the Initial Funding Lender, the Fiscal Agent shall transfer amounts in the Borrower Equity Account of the Project Loan Fund to the Loan Payment Fund to pay interest on the Funding Loan without any need for a Requisition or other written direction. The Fiscal Agent shall make other disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b)(ii) of this Section 4.02 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 Project Loan Fund complies with the terms, conditions and provisions of the Construction Disbursement 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 Disbursement 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 (i) 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), or (ii) to apply funds received from the Funding Lender which the Funding Lender has designated to the Fiscal Agent to make interest payments then due on the Project Loan.

(d) ***Payment of Requisitions.*** 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 Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) ***Project Loan Fund Transfers.*** Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project 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 Project Loan Fund following completion of the construction of the Project in accordance with the Construction Disbursement Agreement, 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 Governmental Note; provided, that any amounts in the Project Account of the Project 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 Disbursement Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project 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) ***Investments.*** Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.



### **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); 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 Project 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 to the Loan Prepayment Fund from the Project 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 conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional 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 Project 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 Project 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 ten (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 Project Loan Agreement as set forth in Section 2.12 hereof), the Fiscal Agent shall request the Governmental Lender to prepare and submit a written invoice to the Borrower for payment of the Governmental Lender Fee not later than thirty (30) days prior to the due date for payment of the Governmental Lender Fee, and the Fiscal Agent shall remit any 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 hold all such moneys uninvested. 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 parties acknowledge that the Fiscal Agent is not providing investment supervision, recommendations, or advice.

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 sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

Except as otherwise provided in the following paragraph of this Section, the Governmental Lender and the Borrower (by their execution of the Project 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 Funding Loan or the 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 Project 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 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, the Funding Lender Representative, and the Servicer and other amounts required to be paid hereunder or under any Project 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 fifty-five (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 Section 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 Project 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 fifty-five (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 fifty-five (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 sixty (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 sixty (60) days after the payment in whole of the 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 Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan 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 (6) years after the date on which no portion of the Governmental Note is outstanding, such records concerning the investments of the gross proceeds of the Funding Loan 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 Rebatable 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, substantially to the effect that such failure will not, in and of itself, adversely affect any exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower. In the event of any conflict between the requirements hereof and those of the Tax Certificate, the Tax Certificate shall control.

**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 as follows: (a) 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 and (b) pay the California Debt and Investment Advisory Commission (“CDIAC”) the CDIAC fee of up to \$5,000 upon receipt of an invoice therefor. 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 one hundred eighty (180) days 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 (15th) 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.** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

**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 Note 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 Funding Lender 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.

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, the Initial Funding 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;
- (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 Project Books.** 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 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) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "Regulations") or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income of the Funding Lender for federal income tax purposes;

(ii) 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;

(iii) not knowingly 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 Governmental Note to be includable in gross income for federal income tax purposes;

(iv) 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 Governmental Note will be excluded from the gross income of the holders of the Governmental Note, for federal income tax purposes, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

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

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into 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 Project 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 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 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 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 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 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 Funding Loan would cause the 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 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 requirements of the Tax Certificate, the parties hereto agree that 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 and chartered city and county, organized and existing under its City Charter and the Constitution and the laws the State.

(b) The Governmental Lender has all necessary power and authority to execute and deliver the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project 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.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding limited obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their 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.

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 PROJECT 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 but is not obligated to perform any such agreement or covenant so long as the Borrower is not in default (beyond any applicable notice and cure period) under the Project 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 Project 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 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 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 Project Loan Agreement, 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 Project Loan Agreement and Section 7 of the 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 Note, 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 Note 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 and the Borrower 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 or the Borrower commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender or the Borrower reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender or the Borrower 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 Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Borrower, 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 and the Borrower, declare the principal of the Funding Loan, as evidenced by the Governmental Note, 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 Project 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 Project 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 Project 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, if any, 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 appraisal 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 Note 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 Note 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 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 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 Note.** 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 Note 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 Project Loan; Remedies Under the Project Loan.**

(a) The Funding Lender Representative shall have the right, with respect to the Project 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 its interest, if any, in the Project Note, 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 Project Note 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 Project 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.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender, the Funding Lender, or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note 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 approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note(s) and the Security Instrument for one or more new Project Notes and a new Security Instrument, evidencing and securing a new loan (the "New Project 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 Project 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 Financing Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

## 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 Project 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 Note (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 Note 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 its appointment 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 security or indemnity reasonably satisfactory to the Fiscal Agent 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 Project 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 Note. The Fiscal Agent disclaims any responsibility for compliance with any state or federal securities laws in connection with the Governmental Note. Except as otherwise specifically provided therein, in acting or omitting to act pursuant to the Project Loan Agreement, the Tax Regulatory Agreement or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including but not limited to this Article VII.

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 Note 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 Project 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 Project 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 this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note 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 Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon (including, without limitation, fees and expenses incurred in connection with enforcement of this Section 7.06); 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 as finally adjudicated by a court of competent jurisdiction 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 7.09 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, the Fiscal Agent, in anticipation of such merger, or any such successor Fiscal Agent, shall cause written notice of such succession to be delivered to the Governmental Lender and the Funding Lender as soon as reasonably practicable, but in any case, not later than thirty (30) days following 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. The resigning Fiscal Agent shall cooperate fully in the transition of funds, accounts and documentation to its successor in accordance with Section 7.12 hereof.

**Section 7.10. Removal of the Fiscal Agent.** The Fiscal Agent may be removed at any time, either with or without cause, with the 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 and the Borrower, 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 thirty (30) 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 to the Governmental Lender thereof.

(b) If 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 thirty (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. Successor Fiscal Agent.** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**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 Project 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 that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, 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 Note 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 evidenced by a certified resolution 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 Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16. [Reserved].**

**Section 7.17. Filing of Financing Statements.** The Funding Lender or the Fiscal Agent may, at the sole expense of the Borrower, 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. In no event shall the Governmental Lender be responsible for any such filings.

The Fiscal Agent shall not be responsible for any initial filings of any financing statements or continuation statement (other than as directed, as described in the immediately preceding paragraph) or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. Unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made.

**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 Note 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. Subject to the foregoing, the Fiscal Agent shall enter into such amendments to the Financing Documents as shall be requested or directed from time to time by the Funding Lender or the Governmental Lender.

**Section 8.03. Opinion of Bond Counsel Required.** No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, 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) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative and the Governmental Lender to the effect that any such proposed 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 Note, 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 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 Note 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 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 Note 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 Note, and the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project 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 with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the 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 amounts or 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 substantially to the effect that the defeasance of the Funding Loan will not, in and of itself, adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; (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 Note remaining unclaimed for two (2) years after the maturity or earlier payment date in full of the Governmental Note: (a) shall be reported and disposed of by the Fiscal Agent in accordance with applicable unclaimed property laws; or (b) 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. 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 Project 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 Note 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; Entire Agreement.** 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, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project 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.

This Funding Loan Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

**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



with a copy to:

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

and a copy to:

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

The Fiscal Agent:

U.S. Bank Trust Company, National Association  
One California Street, Suite 1000  
Mail Code: SF-CA-SFCT  
San Francisco, California 94111  
Attention: Andrew Fung, Vice President  
Facsimile: (415) 677-3769  
Email: andrew.fung@usbank.com

The Borrower:

HPSY 52-54, LP  
c/o Jonathan Rose Companies  
551 Fifth Avenue, 23rd Floor  
New York, NY 10176  
Attention: Yusef Freeman  
Email: yfreeman@rosecompanies.com

and a copy to: (which  
copy shall not  
constitute notice to  
Borrower)

Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, MA 02110  
Attention: David M. Rosen  
Email: drosen@kleinhornig.com

and: Bayview Hunters Point Multipurpose Senior Services, Inc.  
1753 Carroll Avenue  
San Francisco, CA 94124  
Attention: Executive Director  
Email: cathy.davis@bhpmss.org

and a copy to: Carle Mackie  
100 B Street, Suite 400  
Santa Rosa, CA 95401  
Attention: Henry Lo II  
Email: hloh@cmprlaw.com

and a copy to: Bank of America, N.A.  
Mail Code: MA5-100-04-11  
100 Federal Street – 4th Floor  
Boston, MA 02110  
Attention: LIHTC Asset Management  
Telecopier: (617) 346-2724

and: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attention: Michael A. Williamson, Esq.  
Telecopier: (213) 896-0400

The Funding Lender, the Servicer and the Funding Lender Representative (during the Construction Phase):

Bank of America, N.A.  
2000 Clayton Road, Building B, 6th Floor  
Concord, CA 94520  
Mail Code: CA4-704-06-06  
Attention: Loan Administration Manager  
Telecopier: (415) 796-5835

With a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017  
Attention: Michael A. Williamson, Esq.  
Telecopier: (213) 896-0400

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 to and agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement. The parties shall be responsible for ensuring that only Authorized Officers transmit such instructions to the Fiscal Agent, and the parties and the Authorized Officers are responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and authentication keys provided by the Fiscal Agent, if any. The Fiscal Agent shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction delivered by other means. The parties agrees (i) to assume all risks arising out of the use of such Electronic Means to submit instructions and direction to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized instructions and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Fiscal Agent and that there may be more secure methods of transmitting instructions than the use of Electronic Means; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) that it will notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

(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 Note. Upon the Conversion Date, the Servicer shall be 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 Note 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; Venue.** 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, and venue for any action in which the Governmental Lender is a named party shall be San Francisco County, California, unless the Governmental Lender waives this requirement in writing.

**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 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 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 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 Note. The Funding Lender's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth herein and, if an Event of Default also exists under the Project Loan Agreement or the Project Note, to commence foreclosure under the Security Instrument and the other Project 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 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.

**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 F 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,  
CALIFORNIA

By \_\_\_\_\_  
Eric D. Shaw, Director  
Mayor's Office of Housing and Community  
Development

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

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

[Governmental Lender's Signature Page to Hunters Point Shipyard Block 52-54 Funding Loan Agreement]

BANK OF AMERICA, N.A.

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

Name:

Title:

[Initial Funding Lender's Signature Page to Hunters Point Shipyard Block 52-54 Funding Loan Agreement]

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

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

[Fiscal Agent's Signature Page to Hunters Point Shipyard Block 52-54 Funding Loan  
Agreement]



**EXHIBIT A**

**FORM OF GOVERNMENTAL NOTE**

\$[63,000,000]  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(Hunters Point Shipyard Block 52-54)  
SERIES 2023B

THE TRANSFERABILITY HEREOF IS RESTRICTED BY THE TERMS OF SECTION 2.08 OF THE FUNDING LOAN AGREEMENT DESCRIBED HEREIN, INCLUDING THE PROVISION THEREOF LIMITING OWNERSHIP OF THIS NOTE TO A “QUALIFIED TRANSFEREE” (AS DEFINED IN THE FUNDING LOAN AGREEMENT).

US \$[63,000,000] [\_\_\_\_\_], 2023

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 BANK OF AMERICA, N.A. (the “Funding Lender”), and its assigns, the maximum principal sum of [SIXTY-THREE MILLION] DOLLARS (US \$[63,000,000]), 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 City and County of San Francisco, California, Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B (this “Note” or “Governmental Note”) is being delivered pursuant to that certain Funding Loan Agreement dated as of [\_\_\_\_\_] 1, 2023 (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, as fiscal agent (the “Fiscal Agent”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$[63,000,000] (the “Funding Loan”), and this 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 HPSY 52-54, LP, a California limited partnership (the “Borrower”) pursuant to the Project Loan Agreement dated as of [\_\_\_\_\_] 1, 2023 (the “Project Loan Agreement”), among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement and not otherwise prepaid.

Prior to the occurrence of the Conversion Date, reference is made to the Project Loan Agreement and to the Project Note for complete payment and prepayment terms of the Project Loan, payments on which are passed-through under the related Governmental Note; on and after the occurrence of the Conversion Date, for complete payment and prepayment terms of the Project Note, payments on which are passed through under the related Governmental Note, reference is made to the Construction Disbursement Agreement, including the forms of Project Loan Documents attached as Exhibit [L] to the Construction Disbursement Agreement to the extent such forms amend and restate any Project Loan Documents in effect as of the Closing Date and, upon

the execution and effectiveness of such forms, to such amended and restated Project Loan Documents.

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this 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 Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term 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 [\_\_\_\_\_], 2023, interest on this Note at (i) the 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 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 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 Schedule of Advances.

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 Note in full on [MATURITY DATE] (the “Maturity Date”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 shall be replaced by a new amortization schedule provided by the Servicer in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion), 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 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, among other things, 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 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. The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This 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 Note or 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 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 Note and all other third-party obligors.

10. **Loan Charges.** Neither this 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 in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation.

11. **Governing Law; Venue.** This Note shall be governed by the internal law of the State (the "Property Jurisdiction"); and venue shall be in the County of San Francisco, California, unless the Governmental Lender waives this requirement in writing.

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

13. **Address for Payment.** All payments due under this 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.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this 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 such other Event of Default, as applicable, at a rate (the “Default Rate”) equal to the lesser of (i) the “Default Rate” as defined in the Project Note or (ii) the Maximum Interest 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.

15. **Limited Obligation.** This 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 Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this 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.

16. **Registration and Transfer.** The Funding Loan, or any interest therein, and this 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 Note, is only transferable subject to and in accordance with the limitations set forth in the Funding Loan Agreement.

17. **Recycling Transactions.** Notwithstanding any provision of this Note or the Funding Loan Agreement to the contrary, the Obligor shall be permitted to direct Project Note prepayments to be transferred to a custodian or trustee selected by the Obligor, in lieu of application to prepay a like portion of this Note, so long as the Obligor simultaneously causes other funds to be applied to prepay such portion of this 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 Note may not be changed orally.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its duly authorized officer as of the date set forth above.

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO,  
CALIFORNIA

By \_\_\_\_\_  
London N. Breed  
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, as Fiscal Agent**

By \_\_\_\_\_  
Authorized Signatory

## SCHEDULE 1

### FUNDING LOAN AMORTIZATION SCHEDULE

**Interest.** Interest on this Note is payable on the first calendar day of each month commencing [\_\_\_\_\_] 1, 2023, as provided in Section 2 of this Note. Interest accrues on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Schedule of Advances.

**Principal.** Principal of this Note is payable in full on the Maturity Date and in monthly installments as provided in Section 2 of this Note.

The attached Amortization Schedule reflects contemplated amortization of the Permanent Loan as of the Delivery Date and may be revised in accordance with the Funding Loan Agreement.

**EXHIBIT B**

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

U.S. Bank Trust Company, National Association, as Fiscal Agent  
San Francisco, California

HPSY 52-54, LP  
New York, New York

City and County of San Francisco  
Mayor's Office of Housing and Community Development  
San Francisco, California

Bank of America, N.A.  
Community Development Banking  
New York, New York

Re:                \$[63,000,000] City and County of San Francisco, California Multifamily Housing  
Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B

Ladies and Gentlemen:

The undersigned is the holder (the "Funding Lender") of the City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B, dated [\_\_\_\_\_], 2023 (the "Governmental Note") delivered pursuant to the Funding Loan Agreement dated as of [\_\_\_\_\_] 1, 2023 (the "Funding Loan Agreement"), among Bank of America, N.A., in its capacity as 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"). 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 \_\_\_\_\_, \_\_\_\_\_.

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  
San Francisco, California

U.S. Bank Trust Company, National Association, as Fiscal Agent  
San Francisco, California

Re:            \$[63,000,000] City and County of San Francisco, California Multifamily Housing  
Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B

Ladies and Gentlemen:

The undersigned (the "Funding Lender") hereby acknowledges receipt of the City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B, dated [\_\_\_\_\_], 2023 (the "Governmental Note") delivered pursuant to the Funding Loan Agreement dated as of [\_\_\_\_\_] 1, 2023 (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, as fiscal agent (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, (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 required by the related documents to be sold except (x) to 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 from a rating agency; provided, further, however, that the Funding Lender has originated and funded the Funding Loan with the expectation that the outstanding Funding Loan will be sold to the Permanent 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. The Funding Lender acknowledges that no disclosure document has been prepared in connection with the sale of the Governmental Note.

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 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.

[FUNDING LENDER]

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

**EXHIBIT D**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(HUNTERS POINT SHIPYARD BLOCK 52-54)  
SERIES 2023B**

**Maximum Note Amount: \$[63,000,000]**

**FORM OF 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 [\_\_\_\_\_] 1, 2023, 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 City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B, dated [\_\_\_\_\_] 2023 (the "Governmental Note").

REQUISITION NO.: \_\_\_\_\_

PAYMENT DUE TO: \_\_\_\_\_

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

The undersigned, on behalf of HPSY 52-54, LP, a 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: \_\_\_\_\_

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

**EXHIBIT E**

**CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
MULTIFAMILY HOUSING REVENUE NOTE  
(Hunters Point Shipyard Block 52-54)  
SERIES 2023B**

**Maximum Note Amount: \$[63,000,000]**

**FORM OF PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)**

U.S. Bank Trust Company, National Association,  
as Fiscal Agent

You are requested to disburse funds from the Project 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 [\_\_\_\_\_] 1, 2023, 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 City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B, dated [\_\_\_\_\_] 2023 (the "Governmental Note").

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED:

\$ \_\_\_\_\_ from the Project Account

\$ \_\_\_\_\_ from the Borrower Equity Account of the Project Loan Fund

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



3. The undersigned certifies that:
- a. the conditions precedent to disbursement set forth in the Construction Disbursement Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition will be used solely to pay cost or costs allowable under the Funding Loan Agreement and the Construction Disbursement 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 Project 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 Disbursement 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 are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (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. with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:
    - (A) the amounts requisitioned by this Requisition; plus
    - (B) all amounts previously requisitioned and disbursed from the Project Account of the Project 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 Project Loan Agreement, the Construction Disbursement Agreement or any other Project 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 will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the 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 (5) Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

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

5. Percent of construction 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:

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

APPROVED:

BANK OF AMERICA, NATIONAL ASSOCIATION

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

**EXHIBIT F**  
**Form of City and County of San Francisco Mandatory Contracting Provisions**

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

The following provisions are included for reference and are subject to change by the Board of Supervisors and the Mayor. Capitalized terms used but not defined in this Appendix shall have the meanings given in this Agreement.

1. Nondiscrimination; Penalties.

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

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

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

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

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

lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

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

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

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

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Trustee shall comply with the requirements of Chapter

12Q. For each Covered Employee, the Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Trustee is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Trustee shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

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

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

The requirements of Chapter 12T shall only apply to the Trustee's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport

property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved.

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

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

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

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

18. Consideration of Salary History. The Trustee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Trustee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization

unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Appendix A, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/overview](https://codelibrary.amlegal.com/codes/san_francisco/latest/overview).

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

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



**PROJECT LOAN AGREEMENT**

among

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

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

and

**HPSY 52-54, LP,**  
as Borrower

relating to

Hunters Point Shipyard Block 52-54  
151 and 351 Friedell Street, San Francisco, California  
Maximum Project Loan Principal Amount: \$[63,000,000]

Dated as of [\_\_\_\_\_] 1, 2023

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All of the right, title and interest of the City and County of San Francisco (except for its Unassigned Rights) in and to this Project 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 [\_\_\_\_\_] 1, 2023, by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.

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## PROJECT LOAN AGREEMENT

**THIS PROJECT LOAN AGREEMENT** (this “Project Loan Agreement”) is made and entered into as of [\_\_\_\_\_] 1, 2023, by and among the **CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA** (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**, a national banking 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 **HPSY 52-54, LP**, a limited partnership duly organized and existing under the laws of the State (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 tax-exempt loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be loaned under this Project Loan Agreement to the Borrower (the “Project Loan”) for the acquisition, construction and equipping of a scattered site multifamily affordable rental housing development located at 151 and 351 Friedell Street, San Francisco, California known or to be known as “Hunters Point Shipyard Block 52-54”, and the Borrower’s repayment obligations under this Project Loan Agreement are evidenced by the Project Note, as defined herein.

C. The Funding Loan is evidenced by the Governmental Lender’s City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B, dated [\_\_\_\_\_] 2023 (together with all riders and addenda thereto, the “Governmental Note”) 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 Disbursement 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 Project Loan

to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Initial Funding Lender will administer the Loan 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 Project Loan to finance the acquisition and construction of the Project, and to pay certain closing costs with respect to the Loans.

F. The Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Promissory Note dated the Delivery Date (together with all riders and modifications thereto, the "Project Note") delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender without recourse to the Initial Funding Lender as security for the Funding Loan.

G. To secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Leasehold Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated the [Delivery Date] (the "Security Instrument") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Initial Funding Lender as security for the Funding Loan.

H. The Initial Funding Lender has entered into a commitment whereby the Initial Funding Lender has committed, subject to the satisfaction of the conditions to conversion ("Conditions to Conversion") on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by converting the Funding Loan to a permanent loan following the Conversion Date and thereafter transferring its interest in the Funding Loan to [IMPACT C.I.L., LLC, a Delaware limited liability company], or a party related thereto (the "Permanent Lender").

I. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date, as the same may be extended, as provided for in the Construction Disbursement Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and the loan evidencing the Construction Phase will become due and payable.

J. In connection with the conversion of the Project from the Construction Phase to the Permanent Phase, the Borrower and the Initial Funding Lender will enter into a Permanent Loan Agreement dated as of the Conversion Date, which shall replace the Construction Disbursement Agreement on the Conversion Date (the "Permanent Loan Agreement") upon satisfaction of the Conditions to Conversion, and the Project Note and the Security Instrument will be amended and restated as contemplated in the Construction Disbursement Agreement.

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 and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project 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:

“*Administrative General Partner*” means Rose HPSY 52-54 GP, LLC, a Delaware limited liability company.

“*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, the Administrative General Partner and the Managing General Partner.

“*Ground Lease*” means the Ground Lease dated as of [\_\_\_\_\_], 2023, by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure, as landlord, and the Borrower, as tenant.

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

“*Managing General Partner*” means HP Shipyard 52 and 54 LLC, a California limited liability company.

“*Partnership Agreement*” means the Borrower’s Amended and Restated Agreement of Limited Partnership dated as of [\_\_\_\_\_], 2023, as such agreement may be supplemented or amended.

“*Permanent Loan Agreement*” has the meaning set forth in the Recitals.

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

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

“*Project Loan Payment Date*” means (A) the first day of each calendar month, commencing [\_\_\_\_\_] 1, 2023, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“*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 Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

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

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01. Representations of the Governmental Lender.** The Governmental Lender makes the following representations:

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

(b) 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 limited 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.

(c) 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, 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 Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document to which the Governmental Lender is a party; (iv) questions the tax exempt status of the Governmental Note under the Code; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document to which it is a party, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents to which it is a party.

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 Note, 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 Project 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 Project 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 Project 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 Project Loan Agreement and the other Financing Documents. All corporate general partners, if any, of the Borrower are duly organized or incorporated and in good standing under the laws of their respective states of organization or incorporation and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, of the Borrower 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) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) 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) results 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 Project 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 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, 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, and any other 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 except as may be provided in the Partnership Agreement or in a purchase option or right of first refusal agreement in favor of the administrative general partner or managing general partner of Borrower, or an affiliate of either. Nothing in this Project 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.

(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 Project 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, except as may be provided in the Partnership Agreement or in a purchase option or first right of refusal agreement in favor of the administrative general partner or managing general partner of Borrower, or an affiliate of either.

(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 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 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 Project 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 land and a fee interest in the improvements constituting the Project, subject only to the Ground Lease and 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, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, 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 Funding Lender Representative or the Servicer in any manner.

(u) The General Partners of the Borrower executing this Project Loan Agreement and the other Financing Documents are duly and properly in office and fully authorized to execute the same.

(v) The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities, subject to the Ground Lease.

(w) 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. 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.

**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. 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 Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project 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 Project 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 Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project 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 Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project 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 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 the Tax Certificate 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 will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project

Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be “arbitrage bonds” within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement from the Project Account of the Project Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Governmental Note will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement;

(j) No proceeds of the Funding Loan 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 147(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 the 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;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the 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.

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 PROJECT LOAN**

**Section 3.01. Conditions to Funding the Project 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 make the Project 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 Project Note and the Governmental Lender shall have endorsed the Project Note to the Initial Funding Lender;

(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 Fiscal Agent 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; and

(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, and the Servicer.



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

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$[63,000,000]; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; 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 Project Note. The outstanding principal balance of the Project Loan at any time shall be an amount equal to (1) the proceeds of the Funding Loan advanced by the Funding Lender and either (A) deposited by the Fiscal Agent into the Project Loan Fund under the Funding Loan Agreement, or (B) advanced by the Funding Lender to or for the account of the Borrower, minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Project Note.

(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 Conversion Date, the Permanent Lender shall automatically become the Servicer of 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 Project 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 Project Loan to the Servicer, and the Servicer will (i) 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, (ii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iii) 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 Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative, and (iii) neither the Governmental Lender nor the Fiscal Agent shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan.

**Section 3.03. Deposits.** On the Delivery Date and each date of an advance of the proceeds of the Funding Loan, such proceeds shall be deposited in the Project Account of the Project Loan Fund, including the initial deposit on the Delivery Date. Not later than the Delivery Date, the Borrower shall deposit with the Title Company a sum sufficient to pay Costs of Issuance due on such date. The Borrower will deposit with the Servicer the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to or for the account of the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.

To the extent that amounts set aside for Costs of Issuance 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. Assignment to Funding Lender.** The parties hereto acknowledge, and the Borrower consents to, the assignment by the Governmental Lender to the Funding Lender pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note 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 Project 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 Project 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 Project Note; Independent Obligation of Borrower.**

(a) *Payment Obligations.* The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, 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 Project 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 Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project 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 Project Note.

(b) *Obligations Unconditional; No Set-Off.* The obligations of the Borrower to repay the Project Loan, to perform all of its obligations under the Project 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 Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project 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, 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 Project Loan Agreement.

(c) ***Payments from Borrower to Fiscal Agent or Servicer.*** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project 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 Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note 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 Project Note and this Project Loan Agreement.**

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project 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 Project 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 deposited with the Title Company for Costs of Issuance, to the Governmental Lender, the Governmental Lender Fee due on the Closing Date, if any, 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 Note.

(iii) On the Delivery Date, from money deposited with the Title Company for Costs of Issuance, to the Fiscal Agent, an amount equal to \$[\_\_\_\_\_], in respect of initial acceptance and administration fees of the Fiscal Agent 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 Note.

(iv) 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.

(v) 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 the Project Loan Documents or the Financing Documents, and any taxes and assessments levied on the Governmental Lender with respect to the Project, as and when the same become due.

(vi) 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 Project Loan Agreement when due from time to time.

(vii) 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.

(viii) To the Servicer, any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(ix) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(x) 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 4.06 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 Project Loan.*** The Borrower shall have the option to prepay the Project Loan, together with all accrued and unpaid interest thereon, as and to the extent provided in the Project Note.

(b) ***Mandatory Prepayment of the Project Loan.*** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Notes, 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 Servicer 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 sixty (60) calendar days, nor less than thirty (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 Project 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 Project 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 Project 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) From and after the Conversion Date or except as otherwise set forth in the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project 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 Project 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 Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be at all times 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 Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof. At no time shall the Borrower's Investor Limited Partner have any liability under the Financing Documents.

**Section 4.07. Notice to CDLAC and Governmental Lender Prior to Conversion Date.**

The Borrower agrees to provide at least thirty (30) days prior written notice to the California Debt Limit Allocation Committee ("CDLAC") and the Governmental Lender of any prepayment of the Project Note prior to or in connection with the Conversion Date, which may be given to such parties at their respective notice addresses set forth in the Regulatory Agreement and the Funding Loan Agreement, or by mutually acceptable electronic means, for the purpose of facilitating recycling of volume cap as described in Section 3.03 of the Funding Loan Agreement. Any defect

in such notice shall not constitute a default hereunder, under the other Project Loan Documents or the Regulatory Agreement.

## 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 Project 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 thirty (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.

**Section 5.08. Right to Perform Borrower's Obligations.** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, 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 with interest thereon at the default rate of interest payable under the Project 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 Project 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 Project 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 Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project 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 Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, 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 Project Loan. Neither of the Fiscal Agent nor the Governmental Lender makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and neither the Fiscal Agent nor the Governmental Lender shall be liable to the Borrower, the Funding Lender 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 Project 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. In no event shall the Governmental Lender have or be deemed to have any responsibility for any such filings or continuation 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 past, present and future 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 Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees, tenants or licensees in connection with the Project 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) the defeasance or prepayment, in whole or in part, of the Governmental Note;

(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 Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue or misleading statement or alleged misleading statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering or disclosure document or disclosure or continuing disclosure agreement or document for the Governmental Note 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 or disclosure document or disclosure or continuing disclosure agreement or document for the Governmental Note of any material fact 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 Governmental Note or allegations (or regulatory inquiry) that interest on the 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 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 Note to which it is a party;

(xii) Any breach (or alleged breach) by the Borrower of any representation, warranty or covenant made in or pursuant to this Project 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, 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 Project 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 the Borrower to comply with applicable federal and state laws and regulations pertaining to the making of the Project 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 Project 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 Losses are caused by the willful misconduct of such Indemnified Party.

In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Funding Lender, the Fiscal Agent and/or the Governmental Lender in enforcing the provisions hereof, as more fully set forth in this Project 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.

(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.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project 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 Section 4.02, this Section 6.01 and Section 8.13 shall survive the final payment or defeasance of the Governmental Note 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 Project Loan Agreement.

**Section 6.02. Limitation With Respect to the Funding Lender.** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender 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 Project Loan, the Funding Lender shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender is the owner of the Project. Accordingly, during any period that the Funding Lender owns the Project and that this Article VI is applicable to the Funding Lender, the Funding Lender's obligations under this Article VI shall be limited to acts and omissions of the Funding Lender occurring during the period of the Funding Lender'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 Project Loan Agreement, and the term "Event of Default" shall mean, whenever it is used in this Project 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 Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of thirty (30) days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within thirty (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 Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within thirty (30) days after 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 Project Loan Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement 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 Project 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.

(e) An event of default shall occur under the Ground Lease or under any Subordinate Debt Document after the expiration of all applicable notice and cure periods set forth therein.

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 Project 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 Project Note 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project Loan Agreement or in the Project Note, 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 Project 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 Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project 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 Project 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 Project 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 Project 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 the State, including the Act, 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).

(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), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party 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, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). 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.

**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 Project Loan Agreement, the Project Note, 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 Project 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, the Investor Limited Partner 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 in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project 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 Project 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 Project 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 Project 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; Venue.** This Project Loan Agreement and the exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America. Venue shall be the County of San Francisco, California, unless the Governmental Lender waives this requirement in writing.

**Section 8.04. Modifications in Writing.** This Project 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 Project 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 Project Loan Agreement.

**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 Project Loan Agreement.

**Section 8.07. Severability.** The invalidity or unenforceability of any provision of this Project 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 Project 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, shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10. Effective Date and Term.** This Project 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 Project 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 Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12. Funding Lender Representative and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13. Expenses.** The Borrower covenants and agrees to pay and indemnify the Governmental Lender, the Funding Lender and the Fiscal Agent against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Fiscal Agent, without negligence) and arising out of or in connection with the Financing Documents. These obligations and those in Section 6.01 shall remain valid and in effect notwithstanding repayment of the Project Loan

hereunder or the Governmental Notes or termination of this Project Loan Agreement or the Funding Loan Agreement.

**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 Project 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 Project 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 Project 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 Project 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 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 Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16. Capacity of the Fiscal Agent.** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of 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 Project 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. Assignment.** The Project Loan Agreement, the Security Instrument, the Project Note and the Project Loan Documents and all of 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, provided that neither the Funding Lender nor the Fiscal Agent may assign or transfer its interest in the Project Loan Documents separately from its interest in the Funding Loan Agreement and the Governmental Note, 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 the Funding Lender or the Fiscal Agent, as appropriate, in this Project Loan Agreement and in any Project 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 the Funding Lender with reference to the Borrower, the General Partner, any Affiliate of any of them, or the Project, including information that the Borrower is required to deliver to the Funding Lender pursuant to this Project Loan Agreement, provided that such proposed assignee agrees in writing to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Project Loan Agreement or under any of the Project 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 8.19. Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Project 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 Project 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 Project 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 Project Loan, except as expressly provided in the Project Loan Documents or the Financing Documents; and notwithstanding any other provision of the Project 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 Project Loan Agreement or the Project Note, 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 8.20. Counterparts.** This Project 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 8.21. City Contracting Provisions.** The Borrower covenants and agrees to comply with the provisions set forth in Section 21 of the Regulatory Agreement as if fully set forth herein.

[Signature Pages Follow]



IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement, all as of the date first set forth above.

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_  
Eric D. Shaw, Director  
Mayor's Office of Housing and Community  
Development

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

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

[Signature Page to Hunters Point Shipyard Block 52-54 Project Loan Agreement]

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

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

[Signature Page to Hunters Point Shipyard Block 52-54 Project Loan Agreement]

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

[Signature Page to Hunters Point Shipyard Block 52-54 Project Loan Agreement]

No Fee Recording (Pursuant to  
Government Code Section 27383)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

KUTAK ROCK LLP  
1650 FARNAM STREET  
OMAHA, NE 68102  
ATTENTION: MICHELLE E. PERNICEK, ESQ.

---

APN: [Lot \_\_\_\_\_, Block \_\_\_\_\_]  
Site I Property Address: 351 Friedell Street

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

and

HP 52-52, LP,  
a California limited partnership

Dated as of [\_\_\_\_\_] 1, 2023

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(Hunters Point Shipyard Block 52-54)  
Series 2023B

(Block 52)  
(Site I)

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REGULATORY AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS is made and entered into as of [\_\_\_\_\_] 1, 2023 by and between the City and County of San Francisco, California, 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 HPSY 52-54, LP, 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 of a leasehold interest and construction of an affordable multifamily residential rental housing developments on two (2) scattered sites consisting of a total of one hundred twelve (112) residential rental apartment units (which include two (2) manager’s units) and related fixtures, equipment, furnishings and site improvements, known collectively as “Hunters Point Shipyard Block 52-54” (the “HPSY 52-54 Scattered Sites Project”) located in the City which includes [\_\_\_\_\_] units (including one (1) manager unit) located at 351 Friedell Street (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., 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 below), 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 a loan (the “Project Loan”) to the Owner to finance the construction and development of the HPSY 52-54 Scattered Sites 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 note designated “City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B” (the “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 Project Loan Agreement dated as of the date hereof (the “Project Loan Agreement”), whereby the City will make the Project 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, in connection with the Project Loan and the financing of the Project, the City and the Owner will enter into two (2) separate Regulatory Agreements and Declarations of Restrictive Covenants, each dated as of [\_\_\_\_\_] 1, 2023, one with respect to each of the sites (located at 351 Friedell Street (Site I) and 151 Friedell Street (Site II)), collectively comprising the real property on which the HPSY 52-54 Scattered Sites Project is located; and

G. WHEREAS, this is one of such regulatory agreements which pertains to the site of the Project, described in Exhibit A attached hereto (“Site I”), which Project shall be subject to the terms and provisions hereof; and

H. WHEREAS, the City hereby certifies that all things necessary to make the Note, 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 Note, subject to the terms thereof, in all respects have been duly authorized; and

I. 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 acquired, 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 acquisition, 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 Partners 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 Note 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.

“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 Note, being on or about [\_\_\_\_ \_], 2023.

“CNA” – A 20-year capital needs assessment or analysis of replacement reserve requirements, as further described in the CNA Policy.

“CNA Policy” – 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 Note 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 Note, 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 described 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 in the requirements of the Tax Certificate, the Tax Certificate shall control.

“CTCAC” – The California Tax Credit Allocation Committee.

“Declaration of Restrictions – OCII Loan” – The Declaration of Restrictions, related to the Project and the OCII Loan, executed by the Owner.

“Facilities” – The multifamily buildings, structures and other improvements on Site I to be acquired, constructed, improved, and equipped, and all fixtures and other property owned by the

Owner and located on Site I, or used in connection with, such buildings, structures and other improvements.

“Fiscal Agent” – U.S. Bank Trust Company, National Association, a national banking 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.

“General Partner” – Collectively, (i) Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, as administrative general partner of the Owner, (ii) HP Shipyard 52 and 54 LLC, a California limited liability company, as managing general partner of the Owner, and/or (iii) 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 Loan Documents), 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 Loan Documents and hereunder.

“Ground Lease” – The Ground Lease Agreement between the Owner, as tenant, and OCII, as the landlord, pursuant to which the landlord is leasing Site I to the Owner.

“Housing Act” – 42 U.S.C. Section 1437, known as the United States Housing Act of 1937, as amended.

“Housing Law” – Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HPSY 52-54 Scattered Sites Project” has the meaning set forth in Recital B of this Regulatory Agreement.

“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” – 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 [\_\_\_\_\_], 2023, and approved by the Mayor on [\_\_\_\_\_], 2023, approving the issuance of the Note to finance a portion of the Scattered Sites Project.

“Life of the Project” – Means 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 term hereof.

“Loan” – The Tax-Exempt Loan.

“Loan Documents” has the meaning given to the term “Project Loan Documents” in the Funding Loan Agreement.

“Low-Income Tenant” – Any Tenant whose Adjusted Income does not exceed sixty percent (60%) of the lower of City Median Income or 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 lower of the City Median Income or 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” has the meaning set forth in Recital D of this Regulatory Agreement.

“OCII” – The Office of Community Investment and Infrastructure, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California.

“OCII Loan” – Collectively, the loans from the OCII to the Owner and evidenced by the First Amendment to Second Amended and Restated Loan Agreement between OCII and the Owner.

“Operational Rules” – The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities that are referenced in Exhibit I and incorporated herein.

“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 between the General Partner, the Investor Limited Partner, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation.

“Permitted Encumbrances” has the definition given to it in the Security Instrument.

“Person” means 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 Site I.

“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 acquisition, construction, and equipping of the Project Facilities 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 Note.

“Project Loan” has the meaning set forth in Recital C of this Regulatory Agreement.

“Project Loan Agreement” has the meaning set forth in Recital E of this Regulatory Agreement.

“Qualified Project Costs” – The Project Costs paid with respect to the HPSY 52-54 Scattered Sites 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 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 Section 1.103-8(a)(1), provided, however, that only such portion of interest accrued during construction of the HPSY 52-54 Scattered Sites 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 construction of the Project Facilities shall not be a Qualified Project Cost; and provided still further that if any portion of the Project Facilities is being constructed 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 the Project 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 Project 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 construction of the Project Facilities or payments received by such Affiliated Party due to early completion of the Project 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 Project Facilities (within the meaning of Section 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 Section 1.150-2(f)(2)) with respect to the Project Facilities (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project Facilities that do not exceed twenty percent (20%) of the issue price of the Tax-Exempt Note (as defined in Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project 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 of the Project 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” – An Existing 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 or a Very 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 Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated as of the [Closing Date], executed by Owner in favor of the City, and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project.

“Site I” – The parcel or parcels of real property leased to the Owner 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.

“Tax Certificate” – The Certificate as to Arbitrage, dated the Closing Date, executed and delivered by the City and 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 Note owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code).

“Tax-Exempt Loan” – The loan of the proceeds of the Tax-Exempt Note made to the Owner pursuant to the Project Loan Agreement to provide financing for the acquisition and construction of the HPSY 52-54 Scattered Sites Project.

“Tax-Exempt Note” – City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B, issued pursuant to the Issuance Resolution and Funding Loan 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 lower of City Median Income or 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 lower of the City Median Income or 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. Acquisition and Construction of the HPSY 52-54 Scattered Sites 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 the lesser of (i) five percent (5%) of the aggregate principal amount of the Note or (ii) \$100,000 for the payment of Qualified Project Costs.

(b) The Owner’s reasonable expectations respecting the total cost of the construction of the HPSY 52-54 Scattered Sites 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 HPSY 52-54 Scattered Sites Project and expects to expend the maximum authorized amount of the Project 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 set forth 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 with respect to the Funding Loan (as defined in the Funding Loan Agreement) 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 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 Project 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 Note 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 HPSY 52-54 Scattered Sites 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 acquired and constructed for the purpose of providing multifamily residential rental property, 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 or permitted by (i) this Regulatory Agreement, (ii) the OCII Loan and the Declaration of Restrictions – OCII Loan; (iii) any regulatory or restrictive use agreement to which the HPSY 52-54 Scattered Sites Project is or becomes subject pursuant to Section 42 of the Code, (iv) any additional tenant income and rent restrictions imposed by the City, (v) any other federal, State or local governmental agencies that imposes any additional tenant income and rent restrictions, (vi) any preference the Borrower gives to veterans or any other class of persons permitted to be given preference pursuant to the Code, State law, and other applicable federal law, and (vii) any other legal or contractual requirement not excepted by clauses (i) through (v) 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 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 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 Project Loan Agreement and the Security Instrument.

(k) The Project will have and continue to have [Number of Units Written Out] ([\_\_]) residential dwelling units, one (1) of which will be a manager 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. A total of [\_\_\_\_ (\_\_\_)] of the Available Units, excluding one (1) manager’s unit, 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 (1/12) of the amount obtained by multiplying

thirty percent (30%) times sixty percent (60%) of the lower of City Median Income or Median Income for the Area, less the utility allowance.

(ii) Very Low-Income Units. [\_\_\_\_\_] (\_\_\_\_\_) Available Units, excluding one (1) manager's unit, in the Project shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants, [provided however that up to [\_\_\_\_\_] (\_\_\_\_\_) units in the HPSY 52-54 Scattered Sites Project may be rented to and continuously occupied by households who qualify as Low-Income Tenants upon the written agreement of the City]. The monthly rent charged for all the Very Low-Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the lower of City Median Income or the Median Income for the Area, less the utility allowance.

(iii) Additional OCII Restrictions. In addition to the above paragraphs (a)(i) and (ii), all Restricted Units shall at all times be occupied, or held vacant and available for rental, as required by the Declaration of Restrictions – OCII Loan, except where otherwise expressly restricted or prohibited by any CDLAC Requirements.

(iv) Income Restrictions Pursuant to 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 Available Units in the Project or forty-four (44) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, that 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 be Qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Subsection 4(a)(iv) by complying with the requirements of Subsection 4(a)(i) and Subsection 4(a)(ii), as applicable, to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(v) Income and Rent Restrictions Pursuant to the Housing Law. Pursuant to the requirements of 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 forty-four (44) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the lower City Median Income or Median Income for the Area; provided, however, that 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 be Qualified Tenants pursuant to this sentence. 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<sup>th</sup>) 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. The Owner shall satisfy the requirements of this Subsection 4(a)(v) by complying with the requirements of Subsection 4(a)(i) and

Subsection 4(a)(ii), as applicable, to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(vi) 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.

(vii) [Reserved].

(viii) Income and Rent Restrictions in Event of Loss of Foreclosure. In the event of foreclosure, the occupancy and rent restrictions set forth in Subsections 4(a)(ii) 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, in any event, one hundred percent (100%) of the units formerly restricted under this Regulatory Agreement, as applicable, must at all times be occupied by Qualified Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of sixty percent (60%) of Median Income for the Area, and provided, further, 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 the CDLAC Resolution, as applicable. To the extent financially feasible, as mutually determined by the parties, any such rent increase will be limited to (or will be first implemented with) any vacant units. In such event, the City shall use good faith efforts to meet with Owner, within fifteen (15) business days after Owner's written request to meet, in order to determine the amount of any rent increase. The relief provided by this section shall not be construed as authorizing the Owner to exceed any income or rent restrictions imposed on the Project by CDLAC, CTCAC or other agreements, and the Owner represents and warrants that it shall have obtained any necessary approvals or relief from any other applicable income and rent limitations (including without limitation the Declaration of Restrictions – OCII Loan) prior to implementing the relief provided by this Section 4(a)(viii).

(ix) Restricted Units. Because all of the units in the Project are required to be Restricted Units pursuant to Section 4(a) hereof, any Available Unit not required to be rented to an Existing Tenant must be rented to or held vacant for a Very Low-Income or Low-Income Tenant, as applicable.

(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 Note 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.

(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 John Stewart Company, a California corporation, 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 OCII 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)(v) 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)(v), 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), Subsection 4(a)(ii) 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), Subsection 4(a)(ii) 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 five (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 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 Note, 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)(v) 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)(v), 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 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; 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 extent necessary to reflect such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. 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 Project Loan or the Note, including any securitization thereof and any assignment or transfer of the Loan Documents, 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 Project Loan, the Funding Loan or otherwise, including without limitation, any advances of the Project 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 Project Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any note, 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 Project 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 Project 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; 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 Loan, which is not otherwise set forth in the Funding Loan Agreement, the Project Loan Agreement, the Note or any other agreement relating to the Note.

Additionally, the Owner also 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 Note 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 Note and made the Loan to provide funds for the purpose of financing the HPSY 52-54 Scattered Sites Project, all for the purpose, among others, of inducing the Owner to acquire, construct, equip and operate the HPSY 52-54 Scattered Sites Project. In consideration of the making of the Project 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 Note, 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 described in the Partnership Agreement), 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) 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 Project Loan Agreement or any document related to the Project 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) 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 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 Note or the exemption from State personal income taxation of the interest on the Note. Notwithstanding the foregoing sentence, promptly upon the occurrence of any of such transfer, grant, or exercise of remedies under the Security Interest (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 and 5 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 Note is 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. 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, the Owner agrees that Sections 3, 4 and 5 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 Note. 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.

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 Note was 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 or 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 Project 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 the HPSY 52-54 Scattered Sites 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 in Section 7.02 of the Project Loan Agreement.

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 during the term of this Regulatory Agreement one-eighth of one percent (0.125%) of the average outstanding aggregate par amount of the Note in the previous twelve (12) months, but no less than \$2,500.

Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Funding Loan Agreement and/or the Project 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.

Notwithstanding any other provision of this Section the Annual Fee described in this Section is intended to constitute the Annual Fee for the entirety of the Note and both scattered sites of the HPSY 52-54 Scattered Sites Project. Notwithstanding the duplicate fee payment obligations contained in this Section 17 of the other regulatory agreement described in Recital F hereof, the Owner shall only be liable for the payment of the Annual Fee under one such regulatory agreement without duplication of payment, and any such Annual Fee payment under any such regulatory agreement shall be deemed to be credit against the corresponding Annual Fee obligation due under the other such regulatory agreement.

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 thereof 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, of (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  
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

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102  
Attention: Finance Team

If to the Owner: HPSY 52-54, LP  
c/o Jonathan Rose Companies  
551 Fifth Avenue, 23rd Floor  
New York, New York 10176  
Attention: Yusef Freeman  
Email: yfreeman@rosecompanies.com

With copies to: Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, Massachusetts 02110  
Attention: David M. Rosen  
Email: drosen@kleinhornig.com

And: Bayview Hunters Point Multipurpose  
Senior Services, Inc.  
1753 Carroll Avenue  
San Francisco, CA 94124  
Attention: Executive Director  
Email: cathy.davis@bhpmss.org

And: Carle, Mackie, Power & Ross LLP  
100 B Street, Suite 400  
Santa Rosa, CA 95401  
Attention: Henry Loh II  
Email: hloh@cmprlaw.com

If to the Investor Limited Partner:	Bank of America, N.A. Mail Code: MA5-100-04-11 100 Federal Street – 4th Floor Boston, MA 02110 Attention: LIHTC Asset Management Telecopier: (617) 346-2724
With a copy to:	Buchalter, A Professional Corporation 1000 Wilshire Boulevard, Suite 1500 Los Angeles, CA 90017 Attention: Michael A. Williamson, Esq. Telecopier: (213) 896-0400
If to the Funding Lender:	Bank of America, N.A. 2000 Clayton Road, Building B, 6th Floor Concord, CA 94520 Mail Code: CA4-704-06-06 Attention: Loan Administration Manager Telecopier: (415) 796-5835
With a copy to:	Buchalter, A Professional Corporation 1000 Wilshire Boulevard, Suite 1500 Los Angeles, CA 90017 Attention: Michael A. Williamson, Esq. Telecopier: (213) 896-0400
If to the Fiscal Agent:	U.S. Bank Trust Company, National Association One California Street, Suite 1000 Mail Code: SF-CA-SFCT San Francisco, California 94111

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

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.

23. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

24. Third-Party Beneficiaries. The parties to the 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)(v) 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 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; ii) that the acquisition, construction, and operation of the HPSY 52-54 Scattered Sites 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. 22-237 adopted on November 30, 2022, attached hereto as Exhibit F (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 Note is issued, a) changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the CDLAC Requirements require CDLAC Committee or Executive Director approval (or as otherwise required by CDLAC); and b) items #2, #13, #17, and #27 of the CDLAC Requirements cannot be altered. Changes to Items #3 thru #5 of the CDLAC Resolution require no CDLAC Committee or Executive Director approval but any alterations must be reported to CDLAC staff for the affordability period. Changes to Items #8 and #9 of the CDLAC Requirements require no CDLAC notification and changes to Items #28 thru #36 of the CDLAC Requirements require CDLAC Committee or Executive Director approval only prior to the Project being placed in service by the CTCAC.

Compliance with the terms of the CDLAC Requirements not specifically set forth in this Regulatory Agreement are 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 February 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 February 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, 2024), 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 Note is no longer outstanding or (ii) the proceeds of the Note 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,  
CALIFORNIA, acting by and through the Mayor's  
Office of Housing and Community Development

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

Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

Approved as to Form:

DAVID CHIU  
City Attorney

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

Heidi J. Gewertz  
Deputy City Attorney

[Signatures Continue on Following Page.]

[SIGNATURE PAGE TO REGULATORY AGREEMENT – HPSY 52-54 SCATTERED SITES – BLOCK 52 PROJECT]

OWNER:

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director



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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SITE**

[To Be Provided]

## **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 (Hunters Point Shipyard Block 52-54)  
Series 2023B

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 (Hunters Point Shipyard Block 52-54) (Site I) dated as of [\_\_\_\_\_] 1, 2023, by and between the City and County of San Francisco, California 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 Loan (as that term is used in the Regulatory Agreement) to date is \$\_\_\_\_\_;

(b) all amounts disbursed on the 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 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 Loan (as that term is used in the Regulatory Agreement) 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 Loan, exclusive of amounts applied to pay the costs of issuing the Note, have been applied to pay or reimburse the Owner for the cost of acquiring land.

[Signature Appears on Next Page.]

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name: Hunters Point Shipyard Block 52-54

CDLAC Application Number(s): 22-540

CDLAC Resolution Number(s): 22-237

Property Address:

Project Completion Date (if completed, otherwise mark NA): \_\_\_\_\_

Name of Obligation: City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B

The undersigned, being the authorized representatives of HPSY 52-54, LP, 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, California (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants (Hunters Point Shipyard Block 52-54) (Site I), dated as of [\_\_\_\_\_] 1, 2023 (the "Regulatory Agreement"), between the Owner and the City; and

2. the Project Loan Agreement, dated as of [\_\_\_\_\_] 1, 2023, among the City, the Fiscal Agent and the Owner.

Terms used herein and not otherwise defined shall have the meaning ascribed hereto 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 Note was 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 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 (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 a 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 unit) 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 this Regulatory Agreement, the Note, the Project 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 the 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:

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

**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 (Hunters Point Shipyard Block 52-54),  
Series 2023B

The undersigned, being the authorized representative(s) of HPSY 52-54, LP, a California limited partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project financed in part from the proceeds of the above-captioned Note 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 Note were first occupied on \_\_\_\_\_.

DATED: \_\_\_\_\_ **HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

Acknowledged:

City and County of San Francisco, California

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

(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; Penalties.

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

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The 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 the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By entering into this Agreement, the Owner 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 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. The City reserves the right to deny access to, or require the Owner to remove from, City facilities personnel of the Owner who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or



being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

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

7. Limitations on Contributions. By executing this Agreement, the 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 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 Owner's board of directors; the Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. The 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. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Agreement, the Owner shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Owner is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Owner is required to comply with all of the applicable provisions of 12P, irrespective of the listing

of obligations in this Section. By signing and executing this Agreement, the Owner certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Owner shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Owner shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the 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 the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Owner is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Owner shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. Prohibition on Political Activity with City Funds. In performing under this Agreement, the Owner 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 Owner 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 Owner within the meaning of San Francisco Administrative Code Chapter 12M, the Owner shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Owner is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Agreement, the Owner may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Owner, such information must be held by the Owner in confidence and used only in performing this Agreement. The 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. The Owner agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Owner's obligations under Chapter 12T is set forth in this Section. The Owner is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this

Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the 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 which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved.

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

15. Conflict of Interest. By entering into this Agreement, the 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 the City if it becomes aware of any such fact during the term of this Agreement.

16. Food Service Waste Reduction Requirements. The 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 provided remedies for noncompliance.

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

that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

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

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

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

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

22. Contractor Vaccination Policy.

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

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered

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

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

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

(ii) If Owner grants Covered Employees an exemption based on medical or religious grounds, Owner will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

## **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%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%20%203.31.2017_0.pdf)

I-1      Operational Rules for San Francisco Housing  
            Lotteries and Rental Lease Up Activities  
            HPSY 52-54 Scattered Sites  
            Block 52 Project

## **EXHIBIT J**

### **MARKETING AND TENANT SELECTION PLAN**

The Marketing Plan and Tenant Selection Plan (also referred “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)



No Fee Recording (Pursuant to  
Government Code Section 27383)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

KUTAK ROCK LLP  
1650 FARNAM STREET  
OMAHA, NE 68102  
ATTENTION: MICHELLE E. PERNICEK, ESQ.

---

APN: [Lot \_\_\_\_\_, Block \_\_\_\_\_]  
Site II Property Address: 151 Friedell Street

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

and

HP 52-52, LP,  
a California limited partnership

Dated as of [\_\_\_\_\_] 1, 2023

Relating to:

City and County of San Francisco, California  
Multifamily Housing Revenue Note  
(Hunters Point Shipyard Block 52-54)  
Series 2023B

(Block 54)  
(Site II)

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REGULATORY AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS is made and entered into as of [\_\_\_\_\_] 1, 2023 by and between the City and County of San Francisco, California, 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 HPSY 52-54, LP, 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 of a leasehold interest and construction of an affordable multifamily residential rental housing developments on two (2) scattered sites consisting of a total of one hundred twelve (112) residential rental apartment units (which include two (2) manager’s units) and related fixtures, equipment, furnishings and site improvements, known collectively as “Hunters Point Shipyard Block 52-54” (the “HPSY 52-54 Scattered Sites Project”) located in the City which includes [\_\_\_\_\_] units (including one (1) manager unit) located at 151 Friedell Street (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., 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 below), 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 a loan (the “Project Loan”) to the Owner to finance the construction and development of the HPSY 52-54 Scattered Sites 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 note designated “City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B” (the “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 Project Loan Agreement dated as of the date hereof (the “Project Loan Agreement”), whereby the City will make the Project 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, in connection with the Project Loan and the financing of the Project, the City and the Owner will enter into two (2) separate Regulatory Agreements and Declarations of Restrictive Covenants, each dated as of [\_\_\_\_\_] 1, 2023, one with respect to each of the sites (located at 351 Friedell Street (Site I) and 151 Friedell Street (Site II)), collectively comprising the real property on which the HPSY 52-54 Scattered Sites Project is located; and

G. WHEREAS, this is one of such regulatory agreements which pertains to the site of the Project, described in Exhibit A attached hereto (“Site II”), which Project shall be subject to the terms and provisions hereof; and

H. WHEREAS, the City hereby certifies that all things necessary to make the Note, 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 Note, subject to the terms thereof, in all respects have been duly authorized; and

I. 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 acquired, 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 acquisition, 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 Partners 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 Note 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.

“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 Note, being on or about [\_\_\_\_ \_], 2023.

“CNA” – A 20-year capital needs assessment or analysis of replacement reserve requirements, as further described in the CNA Policy.

“CNA Policy” – 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 Note 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 Note, 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 described 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 in the requirements of the Tax Certificate, the Tax Certificate shall control.

“CTCAC” – The California Tax Credit Allocation Committee.

“Declaration of Restrictions – OCII Loan” – The Declaration of Restrictions, related to the Project and the OCII Loan, executed by the Owner.

“Facilities” – The multifamily buildings, structures and other improvements on Site II to be acquired, constructed, improved, and equipped, and all fixtures and other property owned by

the Owner and located on Site II, or used in connection with, such buildings, structures and other improvements.

“Fiscal Agent” – U.S. Bank Trust Company, National Association, a national banking 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.

“General Partner” – Collectively, (i) Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, as administrative general partner of the Owner, (ii) HP Shipyard 52 and 54 LLC, a California limited liability company, as managing general partner of the Owner, and/or (iii) 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 Loan Documents), 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 Loan Documents and hereunder.

“Ground Lease” – The Ground Lease Agreement between the Owner, as tenant, and OCII, as the landlord, pursuant to which the landlord is leasing Site II to the Owner.

“Housing Act” – 42 U.S.C. Section 1437, known as the United States Housing Act of 1937, as amended.

“Housing Law” – Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HPSY 52-54 Scattered Sites Project” has the meaning set forth in Recital B of this Regulatory Agreement.

“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” – 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 [\_\_\_\_\_], 2023, and approved by the Mayor on [\_\_\_\_\_], 2023, approving the issuance of the Note to finance a portion of the Scattered Sites Project.

“Life of the Project” – Means 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 term hereof.

“Loan” – The Tax-Exempt Loan.

“Loan Documents” has the meaning given to the term “Project Loan Documents” in the Funding Loan Agreement.

“Low-Income Tenant” – Any Tenant whose Adjusted Income does not exceed sixty percent (60%) of the lower of City Median Income or 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 lower of the City Median Income or 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” has the meaning set forth in Recital D of this Regulatory Agreement.

“OCII” – The Office of Community Investment and Infrastructure, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California.

“OCII Loan” – Collectively, the loans from the OCII to the Owner and evidenced by the First Amendment to Second Amended and Restated Loan Agreement between OCII and the Owner.

“Operational Rules” – The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities that are referenced in Exhibit I and incorporated herein.

“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 between the General Partner, the Investor Limited Partner, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation.

“Permitted Encumbrances” has the definition given to it in the Security Instrument.

“Person” means 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 Site II.

“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 acquisition, construction, and equipping of the Project Facilities 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 Note.

“Project Loan” has the meaning set forth in Recital C of this Regulatory Agreement.

“Project Loan Agreement” has the meaning set forth in Recital E of this Regulatory Agreement.

“Qualified Project Costs” – The Project Costs paid with respect to the HPSY 52-54 Scattered Sites 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 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 Section 1.103-8(a)(1), provided, however, that only such portion of interest accrued during construction of the HPSY 52-54 Scattered Sites 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 construction of the Project Facilities shall not be a Qualified Project Cost; and provided still further that if any portion of the Project Facilities is being constructed 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 the Project 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 Project 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 construction of the Project Facilities or payments received by such Affiliated Party due to early completion of the Project 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 Project Facilities (within the meaning of Section 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 Section 1.150-2(f)(2)) with respect to the Project Facilities (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project Facilities that do not exceed twenty percent (20%) of the issue price of the Tax-Exempt Note (as defined in Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project 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 of the Project 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” – An Existing 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 or a Very 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 Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated as of the [Closing Date], executed by Owner in favor of the City, and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project.

“Site II” – The parcel or parcels of real property leased to the Owner 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.

“Tax Certificate” – The Certificate as to Arbitrage, dated the Closing Date, executed and delivered by the City and 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 Note owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code).

“Tax-Exempt Loan” – The loan of the proceeds of the Tax-Exempt Note made to the Owner pursuant to the Project Loan Agreement to provide financing for the acquisition and construction of the HPSY 52-54 Scattered Sites Project.

“Tax-Exempt Note” – City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B, issued pursuant to the Issuance Resolution and Funding Loan 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 lower of City Median Income or 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 lower of the City Median Income or 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. Acquisition and Construction of the HPSY 52-54 Scattered Sites 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 the lesser of (i) five percent (5%) of the aggregate principal amount of the Note or (ii) \$100,000 for the payment of Qualified Project Costs.

(b) The Owner’s reasonable expectations respecting the total cost of the construction of the HPSY 52-54 Scattered Sites 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 HPSY 52-54 Scattered Sites Project and expects to expend the maximum authorized amount of the Project 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 set forth 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 with respect to the Funding Loan (as defined in the Funding Loan Agreement) 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 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 Project 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 Note 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 HPSY 52-54 Scattered Sites 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 acquired and constructed for the purpose of providing multifamily residential rental property, 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 or permitted by (i) this Regulatory Agreement, (ii) the OCII Loan and the Declaration of Restrictions – OCII Loan; (iii) any regulatory or restrictive use agreement to which the HPSY 52-54 Scattered Sites Project is or becomes subject pursuant to Section 42 of the Code, (iv) any additional tenant income and rent restrictions imposed by the City, (v) any other federal, State or local governmental agencies that imposes any additional tenant income and rent restrictions, (vi) any preference the Borrower gives to veterans or any other class of persons permitted to be given preference pursuant to the Code, State law, and other applicable federal law, and (vii) any other legal or contractual requirement not excepted by clauses (i) through (v) 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 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 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 Project Loan Agreement and the Security Instrument.

(k) The Project will have and continue to have [Number of Units Written Out] ([\_\_\_]) residential dwelling units, one (1) of which will be a manager 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. A total of [\_\_\_\_\_] (\_\_\_) of the Available Units, excluding one (1) manager’s unit, 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 (1/12) of the amount obtained by multiplying thirty



percent (30%) times sixty percent (60%) of the lower of City Median Income or Median Income for the Area, less the utility allowance.

(ii) Very Low-Income Units. [\_\_\_\_\_] Available Units, excluding one (1) manager's unit, in the Project shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants, [provided however that up to [\_\_\_\_\_] units in the HPSY 52-54 Scattered Sites Project may be rented to and continuously occupied by households who qualify as Low-Income Tenants upon the written agreement of the City]. The monthly rent charged for all the Very Low-Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the lower of City Median Income or the Median Income for the Area, less the utility allowance.

(iii) Additional OCII Restrictions. In addition to the above paragraphs (a)(i) and (ii), all Restricted Units shall at all times be occupied, or held vacant and available for rental, as required by the Declaration of Restrictions – OCII Loan, except where otherwise expressly restricted or prohibited by any CDLAC Requirements.

(iv) Income Restrictions Pursuant to 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 Available Units in the Project or forty-four (44) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, that 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 be Qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Subsection 4(a)(iv) by complying with the requirements of Subsection 4(a)(i) and Subsection 4(a)(ii), as applicable, to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(v) Income and Rent Restrictions Pursuant to the Housing Law. Pursuant to the requirements of 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 forty-four (44) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the lower City Median Income or Median Income for the Area; provided, however, that 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 be Qualified Tenants pursuant to this sentence. 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<sup>th</sup>) 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. The Owner shall satisfy the requirements of this Subsection 4(a)(v) by complying with the requirements of Subsection 4(a)(i) and

Subsection 4(a)(ii), as applicable, to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(vi) 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.

(vii) [Reserved].

(viii) Income and Rent Restrictions in Event of Loss of Foreclosure. In the event of foreclosure, the occupancy and rent restrictions set forth in Subsections 4(a)(ii) 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, in any event, one hundred percent (100%) of the units formerly restricted under this Regulatory Agreement, as applicable, must at all times be occupied by Qualified Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of sixty percent (60%) of Median Income for the Area, and provided, further, 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 the CDLAC Resolution, as applicable. To the extent financially feasible, as mutually determined by the parties, any such rent increase will be limited to (or will be first implemented with) any vacant units. In such event, the City shall use good faith efforts to meet with Owner, within fifteen (15) business days after Owner's written request to meet, in order to determine the amount of any rent increase. The relief provided by this section shall not be construed as authorizing the Owner to exceed any income or rent restrictions imposed on the Project by CDLAC, CTCAC or other agreements, and the Owner represents and warrants that it shall have obtained any necessary approvals or relief from any other applicable income and rent limitations (including without limitation the Declaration of Restrictions – OCII Loan) prior to implementing the relief provided by this Section 4(a)(viii).

(ix) Restricted Units. Because all of the units in the Project are required to be Restricted Units pursuant to Section 4(a) hereof, any Available Unit not required to be rented to an Existing Tenant must be rented to or held vacant for a Very Low-Income or Low-Income Tenant, as applicable.

(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 Note 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.

(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 John Stewart Company, a California corporation, 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 OCII 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)(v) 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)(v), 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), Subsection 4(a)(ii) 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), Subsection 4(a)(ii) 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 five (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 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 Note, 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)(v) 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)(v), 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 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; 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 extent necessary to reflect such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. 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 Project Loan or the Note, including any securitization thereof and any assignment or transfer of the Loan Documents, 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 Project Loan, the Funding Loan or otherwise, including without limitation, any advances of the Project 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 Project Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any note, 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 Project 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 Project 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; 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 Loan, which is not otherwise set forth in the Funding Loan Agreement, the Project Loan Agreement, the Note or any other agreement relating to the Note.

Additionally, the Owner also 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 Note 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 Note and made the Loan to provide funds for the purpose of financing the HPSY 52-54 Scattered Sites Project, all for the purpose, among others, of inducing the Owner to acquire, construct, equip and operate the HPSY 52-54 Scattered Sites Project. In consideration of the making of the Project 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 Note, 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 described in the Partnership Agreement), 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) 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 Project Loan Agreement or any document related to the Project 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) 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 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 Note or the exemption from State personal income taxation of the interest on the Note. Notwithstanding the foregoing sentence, promptly upon the occurrence of any of such transfer, grant, or exercise of remedies under the Security Interest (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 and 5 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 Note is 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. 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, the Owner agrees that Sections 3, 4 and 5 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 Note. 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.

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 Note was 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 or 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 Project 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 the HPSY 52-54 Scattered Sites 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 in Section 7.02 of the Project Loan Agreement.

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 during the term of this Regulatory Agreement one-eighth of one percent (0.125%) of the average outstanding aggregate par amount of the Note in the previous twelve (12) months, but no less than \$2,500.

Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Funding Loan Agreement and/or the Project 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.

Notwithstanding any other provision of this Section the Annual Fee described in this Section is intended to constitute the Annual Fee for the entirety of the Note and both scattered sites of the HPSY 52-54 Scattered Sites Project. Notwithstanding the duplicate fee payment obligations contained in this Section 17 of the other regulatory agreement described in Recital F hereof, the Owner shall only be liable for the payment of the Annual Fee under one such regulatory agreement without duplication of payment, and any such Annual Fee payment under any such regulatory agreement shall be deemed to be credit against the corresponding Annual Fee obligation due under the other such regulatory agreement.

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 thereof 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, of (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  
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

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102  
Attention: Finance Team

If to the Owner: HPSY 52-54, LP  
c/o Jonathan Rose Companies  
551 Fifth Avenue, 23rd Floor  
New York, New York 10176  
Attention: Yusef Freeman  
Email: yfreeman@rosecompanies.com

With copies to: Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, Massachusetts 02110  
Attention: David M. Rosen  
Email: drosen@kleinhornig.com

And: Bayview Hunters Point Multipurpose  
Senior Services, Inc.  
1753 Carroll Avenue  
San Francisco, CA 94124  
Attention: Executive Director  
Email: cathy.davis@bhpmss.org

And: Carle, Mackie, Power & Ross LLP  
100 B Street, Suite 400  
Santa Rosa, CA 95401  
Attention: Henry Loh II  
Email: hloh@cmprlaw.com



If to the Investor Limited Partner:	Bank of America, N.A. Mail Code: MA5-100-04-11 100 Federal Street – 4th Floor Boston, MA 02110 Attention: LIHTC Asset Management Telecopier: (617) 346-2724
With a copy to:	Buchalter, A Professional Corporation 1000 Wilshire Boulevard, Suite 1500 Los Angeles, CA 90017 Attention: Michael A. Williamson, Esq. Telecopier: (213) 896-0400
If to the Funding Lender:	Bank of America, N.A. 2000 Clayton Road, Building B, 6th Floor Concord, CA 94520 Mail Code: CA4-704-06-06 Attention: Loan Administration Manager Telecopier: (415) 796-5835
With a copy to:	Buchalter, A Professional Corporation 1000 Wilshire Boulevard, Suite 1500 Los Angeles, CA 90017 Attention: Michael A. Williamson, Esq. Telecopier: (213) 896-0400
If to the Fiscal Agent:	U.S. Bank Trust Company, National Association One California Street, Suite 1000 Mail Code: SF-CA-SFCT San Francisco, California 94111

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

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.

23. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

24. Third-Party Beneficiaries. The parties to the 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)(v) 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 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; ii) that the acquisition, construction, and operation of the HPSY 52-54 Scattered Sites 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. 22-237 adopted on November 30, 2022, attached hereto as Exhibit F (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 Note is issued, a) changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the CDLAC Requirements require CDLAC Committee or Executive Director approval (or as otherwise required by CDLAC); and b) items #2, #13, #17, and #27 of the CDLAC Requirements cannot be altered. Changes to Items #3 thru #5 of the CDLAC Resolution require no CDLAC Committee or Executive Director approval but any alterations must be reported to CDLAC staff for the affordability period. Changes to Items #8 and #9 of the CDLAC Requirements require no CDLAC notification and changes to Items #28 thru #36 of the CDLAC Requirements require CDLAC Committee or Executive Director approval only prior to the Project being placed in service by the CTCAC.

Compliance with the terms of the CDLAC Requirements not specifically set forth in this Regulatory Agreement are 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 February 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 February 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, 2024), 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 Note is no longer outstanding or (ii) the proceeds of the Note 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,  
CALIFORNIA, acting by and through the Mayor's  
Office of Housing and Community Development

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

Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

Approved as to Form:

DAVID CHIU  
City Attorney

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

Heidi J. Gewertz  
Deputy City Attorney

[Signatures Continue on Following Page.]

[SIGNATURE PAGE TO REGULATORY AGREEMENT – HPSY 52-54 SCATTERED SITES – BLOCK 54 PROJECT]

OWNER:

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

[SIGNATURE PAGE TO REGULATORY AGREEMENT – HPSY 52-54 SCATTERED SITES – BLOCK 54 PROJECT]

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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 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**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)     Limited     General
- Attorney-In-Fact
- Fiscal Agent(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SITE**

[To Be Provided]

## **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 (Hunters Point Shipyard Block 52-54)  
Series 2023B

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 (Hunters Point Shipyard Block 52-54) (Site II) dated as of [\_\_\_\_\_] 1, 2023, by and between the City and County of San Francisco, California 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 Loan (as that term is used in the Regulatory Agreement) to date is \$\_\_\_\_\_;

(b) all amounts disbursed on the 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 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 Loan (as that term is used in the Regulatory Agreement) 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 Loan, exclusive of amounts applied to pay the costs of issuing the Note, have been applied to pay or reimburse the Owner for the cost of acquiring land.

[Signature Appears on Next Page.]

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name: Hunters Point Shipyard Block 52-54

CDLAC Application Number(s): 22-540

CDLAC Resolution Number(s): 22-237

Property Address:

Project Completion Date (if completed, otherwise mark NA): \_\_\_\_\_

Name of Obligation: City and County of San Francisco, California Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54), Series 2023B

The undersigned, being the authorized representatives of HPSY 52-54, LP, 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, California (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants (Hunters Point Shipyard Block 52-54) (Site II), dated as of [\_\_\_\_\_] 1, 2023 (the "Regulatory Agreement"), between the Owner and the City; and

2. the Project Loan Agreement, dated as of [\_\_\_\_\_] 1, 2023, among the City, the Fiscal Agent and the Owner.

Terms used herein and not otherwise defined shall have the meaning ascribed hereto 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 Note was 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 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 (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 a 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 unit) 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 this Regulatory Agreement, the Note, the Project 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 the 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:

**HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

**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 (Hunters Point Shipyard Block 52-54),  
Series 2023B

The undersigned, being the authorized representative(s) of HPSY 52-54, LP, a California limited partnership, hereby certifies that: (complete blank information):

Ten percent (10%) of the dwelling units in the Project financed in part from the proceeds of the above-captioned Note 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 Note were first occupied on \_\_\_\_\_.

DATED: \_\_\_\_\_ **HPSY 52-54, LP**, a California limited partnership

By: Rose HPSY 52-54 GP, LLC, a Delaware limited liability company, its administrative general partner

By: Rose GP Investors, LLC, a Delaware limited liability company, its managing member

By: Rose Company Holdings, LLC, a Delaware limited liability company, its managing member

By: \_\_\_\_\_  
Name: Yusef Freeman  
Title: Authorized Signatory

By: HP Shipyard 52 and 54 LLC, a California limited liability company, its managing general partner

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

By: \_\_\_\_\_  
Name: Cathy Davis  
Title: Executive Director

Acknowledged:

City and County of San Francisco, California

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

**EXHIBIT F**  
**CDLAC RESOLUTION**

(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; Penalties.

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

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The 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 the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By entering into this Agreement, the Owner 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 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. The City reserves the right to deny access to, or require the Owner to remove from, City facilities personnel of the Owner who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or

being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

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

7. Limitations on Contributions. By executing this Agreement, the 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 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 Owner's board of directors; the Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Owner; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. The 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. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Agreement, the Owner shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Owner is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Owner is required to comply with all of the applicable provisions of 12P, irrespective of the listing

of obligations in this Section. By signing and executing this Agreement, the Owner certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Agreement, the Owner shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Owner shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the 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 the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Owner is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Owner shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. Prohibition on Political Activity with City Funds. In performing under this Agreement, the Owner 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 Owner 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 Owner within the meaning of San Francisco Administrative Code Chapter 12M, the Owner shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Owner is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Agreement, the Owner may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Owner, such information must be held by the Owner in confidence and used only in performing this Agreement. The 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. The Owner agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Owner's obligations under Chapter 12T is set forth in this Section. The Owner is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this

Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the 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 which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved.

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

15. Conflict of Interest. By entering into this Agreement, the 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 the City if it becomes aware of any such fact during the term of this Agreement.

16. Food Service Waste Reduction Requirements. The 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 provided remedies for noncompliance.

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



that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

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

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

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

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

22. Contractor Vaccination Policy.

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

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered

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

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

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

(ii) If Owner grants Covered Employees an exemption based on medical or religious grounds, Owner will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

## **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%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%20%203.31.2017_0.pdf)

I-1      Operational Rules for San Francisco Housing  
            Lotteries and Rental Lease Up Activities  
            HPSY 52-54 Scattered Sites  
            Block 54 Project

## **EXHIBIT J**

### **MARKETING AND TENANT SELECTION PLAN**

The Marketing Plan and Tenant Selection Plan (also referred “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%20%203.31.2017\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Inclusionary%20Manuals/Preferences%20Manual%20-%20%20%203.31.2017_0.pdf)

## PUBLIC DISCLOSURES RELATING TO CONDUIT REVENUE OBLIGATIONS

Pursuant to California Government Code Section 5852.1, the borrower (the "Borrower") identified below 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 "Bonds") as identified below.

1. Name of Borrower: **HPSY 52-54, LP, a California limited partnership.**
2. Board of Supervisors Meeting Date: **April 11, 2023.**
3. Name of Bond Issue / Conduit Revenue Obligations: **City and County of San Francisco Multifamily Housing Revenue Note (Hunters Point Shipyard Block 52-54) Series 2023B.**
4.  Private Placement Lender or Bonds 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 Bonds:
  - (A) The true interest cost of the Bonds, 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 Bonds (to the nearest ten-thousandth of one percent): **6.10% (estimated permanent loan rate as of 3/7/23; final loan rate to be set a few days prior to the closing date, estimated at 4/28/23; rate during construction is variable).**
  - (B) The finance charge of the Bonds, which means the sum of all fees and charges paid to third parties: **\$2,329,600 (\$1,916,275 estimated to be paid upfront and \$413,325 estimated to be paid during the term of the Bonds and through the end of the Regulatory Agreement compliance period).**
  - (C) The amount of proceeds received by the public body for sale of the Bonds less the finance charge of the Bonds described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of the Bonds: **\$55,111,779 (\$63,000,000 estimated initial par less \$7,888,221 of estimated capitalized interest; all finance charges funded from a source other than Bond proceeds).**
  - (D) The total payment amount, which means the sum total of all payments the Borrower will make to pay debt service on the Bonds plus the finance charge of the Bonds described in subparagraph (B) not paid with the proceeds of the Bonds (which total payment amount shall be calculated to the final maturity of the Bonds): **\$70,342,128 (consisting of repayment of an estimated \$60,589,538 after construction, estimated principal and interest payments of \$4,863,951 on the permanent loan amount of \$2,410,462 and estimated finance charges identified in (B)).**

This document has been made available to the public at the Meeting of the Board.

Dated: March 16, 2023

**Project Description**  
Multifamily Securities Program  
City and County of San Francisco

**Hunters Point Shipyard Blocks 52 & 54**

**Overview**

The funds described in the “Financing Structure” section below will be used to finance the development of Hunters Point Shipyard Blocks 52 & 54, a 112-unit affordable multifamily housing project to be located at 151 and 351 Friedell Street, area code 94124, in the City and County of San Francisco (the “Project”).

Upon completion, the Project will include approximately 165,803 square feet of gross floor area, comprised of 102,843 square feet of residential area and 62,960 square feet of non-residential area. Non-residential spaces will include a Community Room, fitness room, lounge, laundry rooms, property management office, resident services office, circulation, parking, and service/mechanical spaces.

Total project costs, including the cost to acquire the land and construct two new buildings, will be approximately \$132,880,642 or \$1,186,434 per dwelling unit.

The residential unit distribution, which will include two 2-bedroom manager’s units, is:

<u>Unit type</u>	<u>Number of units</u>
1-Bedroom	49
2-Bedroom	31
3-Bedroom	23
4-Bedroom	8
5-Bedroom	1

Eighty-eight percent (88%) of the residential units will serve households earning less than 50% AMI based off the San Francisco County’s Area Median Income (AMI), while eight percent (8%) will serve households earning less than 40% AMI and the balance of units will serve households earning less than 30% AMI.

**Residents**

No residents will be displaced as both sites are currently vacant lots.

**Site Description and Scope of Work**

Address: 151 and 351 Friedell Street, San Francisco, CA 94124  
Block/Lot: 4591C/212 and 4591C/673

Property amenities will include:

- 112 units of affordable housing
- Community Room
- Resident Lounge
- Fitness Room
- Landscaped Courtyards, including a small play area

- Roof Terrace
- Laundry Rooms
- Property Management Office
- Resident Services Office
- Maintenance Office and Storage Area
- 76 bicycle spaces with bike maintenance areas
- 62 parking spaces
- Photovoltaic Systems
- High energy performance: Fossil-Fuel free
- Healthy, non-toxic materials

### **Development and Management Team**

Project Sponsor[s]:	Bayview Hunters Point Multipurpose Senior Services (BHPMSS) & The Jonathan Rose Companies (JRC)
General Contractor:	Baines Group, Inc. & Nibbi Brothers General Contractors (BGI/Nibbi)
Architect of Record:	Mithun, Inc.
Property Manager:	The John Stewart Company

### **Project Ownership Structure**

Borrower Entity:	HPSY 52-54, LP
Managing General Partner/ Managing Member:	HP Shipyard 52 and 54 LLC

Bank of America, N.A. is the investor limited partner/member will own a 99.99% interest in the borrower entity.

### **Financing Structure**

The following sources of capital financing are expected to be utilized:

- Tax-exempt bonds issued by the City;
- 4% low income housing tax credits (LIHTC);
- a conventional first mortgage;
- Infill Infrastructure Grant (IIG) from California Department of Housing and Community Development (HCD);
- a GP equity contribution or loan; and
- soft debt from the Office of Community Investment and Infrastructure.

### **Narrative Description of Project Sponsor Experience**



BHPMSS and JRC will act as co-developers for the Project. BHPMSS is an established services provider in the neighborhood and acted as co-developer with McCormack Baron Salazar for the Dr. George W. Davis Senior Residences and Center.

BHPMSS will act as co-developer of the Project and Managing General Partner of the Limited Partnership (“LP”) that will be established for the development and ownership of the Project. JRC will act as co-developer of the Project and act as General Partner of the LP. This is the same structure that was established for the development and ownership of Dr. George W. Davis Senior Residences and Center.

The John Stewart Company (“JSCo”) will act as Property Manager for the Project. JSCo currently manages 39 properties in San Francisco including the nearby Hunters View HOPE SF site.

### **Schedule**

Financing is anticipated to close on April 28, 2023, with construction commencing within 15 days of closing. All construction is scheduled to be completed by April 2025.



## CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

---

915 Capitol Mall, Room 311  
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

BETTY T. YEE  
STATE CONTROLLER

INTERIM EXECUTIVE DIRECTOR  
NANCEE ROBLES

November 30, 2022

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. 22-237, adopted by the California Debt Limit Allocation Committee (the "Committee") on November 30, 2022, transferring \$63,000,000.00 of the 2022 State Ceiling on Qualified Private Bonds to the City and County of San Francisco ("the Applicant") for the Hunters Point Shipyard Block 52 and 54 (the "Project"). The Resolution No. 22-237 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.

Eric D. Shaw

November 30, 2022

Page 2

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: <http://www.treasurer.ca.gov/cdlac/forms.asp>. Failure to submit Compliance may result in disqualification from future program participation.

Sincerely,



Nancee Robles  
Interim Executive Director

Enclosures

cc: Elizabeth Colomello, City and County of San Francisco  
J. Toger Swanson, Esq., Kutak Rock LLP  
Alexis Campbell, HPSY 52-54 LP

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

**RESOLUTION NO. 22-237**

**A RESOLUTION TRANSFERRING A PORTION OF THE 2022 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT**

**WHEREAS**, the California Debt Limit Allocation Committee ("Committee") 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 2022 State Ceiling on Qualified Private Activity Bonds under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations ("Bonds") for a Project as specifically described in Exhibit A ("Project") (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Regulations of the Committee implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds); and

**WHEREAS**, the 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 on Qualified Private Activity Bonds to the Applicant for the benefit of the Project, the Committee has relied upon the written facts and information represented in the Application by the Project Sponsor and the Applicant; and

**WHEREAS**, it is appropriate for the Committee to make a transfer of a portion of the 2022 State Ceiling on Qualified Private Activity Bonds ("Allocation") in order to benefit such Project described in the Application.

**NOW, THEREFORE**, the California Debt Limit Allocation Committee resolves as follows:

**Section 1.** There is hereby transferred to the Applicant an amount of the 2022 State Ceiling on Qualified Private Activity Bonds equal to \$63,000,000. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of 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, will be bound by such terms and conditions. The Applicant shall monitor the Project for compliance with the terms and conditions of this Resolution. In addition, the Project shall be subject to the monitoring provisions of the California Code of Regulations, Title 4, Section 10337(c) and Section 5220 of the Committee's Regulations.

**Section 3.** Any modification to the Project made prior to the issuance of the Bonds that impacts the Resolution must be reported to the Executive Director and, if the Executive Director determines such modification to be material in light of the Committee's Regulations, shall require reconsideration by the Committee before the Allocation may be used for the Project. After Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy.

In addition, after bonds are issued, changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the Exhibit A require Committee or Executive Director approval for the term of commitment; changes to item #2, #13, #17, and #27 of the Exhibit A cannot be altered; changes to Items #3 thru #5 of the Exhibit A require no Committee or Executive Director approval but any alterations must be reported to CDLAC staff for the affordability period; changes to Items #8 and #9 of the Exhibit A require no CDLAC notification; and changes to Items #28 thru #36 of the Exhibit A require Committee or Executive Director approval only prior to the Project being Placed in Service by the CA Tax Credit Allocation Committee (CTCAC), if the bond receives tax credits.

**Section 4.** Any material changes in the structure of the bond sale prior to the issuance of the Bonds and not previously approved by the Committee shall require approval of the Committee Chair or the Executive Director.

**Section 5.** The transfer of proceeds from the sale of bonds to a project other than the Project subject to this Resolution is allowable only with the prior approval of the Executive Director in consultation with the Chair.

**Section 6.** The Applicant is authorized to use the Allocation transferred hereby 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 this Committee.

**Section 7.** If the Allocation transferred herein to the Applicant has not issued bonds by the close of business on May 29, 2023, the Applicant shall notify the Committee and carryforward the Allocation to the next approved project to be awarded a bond allocation in accordance with Section 5133 of the Committee's Regulations. In a case of extreme hardship, the Executive Director may extend this date by up to five (5) business days.

**Section 8.** Within twenty-four (24) hours of using the Allocation to issue Qualified Private Activity Bonds, the Applicant shall notify the Committee 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 Program, the date the Allocation was used and the amount of Allocation used.

**Section 9.** Within fifteen (15) calendar days of the Bond closing, the Applicant or its counsel shall formally transmit to the Committee information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a template prescribed by and made available by the Committee.

**Section 10.** Any differences between the amount of Bonds issued and the amount of the Allocation granted in Section 1 of this Resolution shall be retained by the Applicant for the period allowed by Section 146(f)(3)(A) of the Internal Revenue Code regarding carryforward elections. Use of any Carryforward Allocation shall be in accordance with Section 5133 of the Committee's Regulations regarding carryforward elections.

**Section 11.** The staff of the Committee is authorized and directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain a copy of this Resolution in the Applicant's official records for the term of the Bonds under this Allocation or the term of the income and rental restrictions whichever is longer. The Committee staff is further directed to retain a copy of this Resolution in the files of the Committee (or any successor thereto) for the same period of time.

**Section 12.** In consideration of the Allocation transferred to the Applicant and the Project Sponsor, the Applicant and the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Furthermore, the Applicant and the Project Sponsor expressly agree that the terms and conditions of this Resolution may be enforced by the Committee through an action for specific performance or any other available remedy, provided however, that the Committee agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, the Applicant and the Project Sponsor shall ensure that the Bond documents, as appropriate, expressly provide that the Committee is a third party beneficiary of the terms and conditions set forth in this Resolution.

**Section 13.** The Certification of Compliance II document 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 by the Project Sponsor to the Applicant. An Annual Applicant Public Benefits and On-going Compliance Self-Certification must be submitted by the Applicant to CDLAC online every year until the Certificate of Completion document has been submitted by the Project Sponsor to the Applicant. Following the submission of the Certificate of Completion to the Applicant, the Certification of Compliance II is to 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 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 template may be found at this website location: <http://www.treasurer.ca.gov/cdlac/forms.asp>. Failure to submit compliance may result in disqualification from future program participation.

**Section 14.** All relevant bond documents for Qualified Residential Rental Projects must 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 to the applicant prior to the redemption of bonds at conversion to permanent financing.

**Section 15.** This Resolution shall take effect immediately upon its adoption.

\* \* \*

**CERTIFICATION**

I, Nancee Robles, 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 Jesse Unruh Building, 915 Capitol Mall, Sacramento, California 95814, on November 30, 2022 with the following votes recorded:

AYES: State Treasurer Fiona Ma, CPA  
Gayle Miller for Governor Gavin Newsom  
Anthony Sertich for State Controller Betty T. Yee

NOES: None  
ABSTENTIONS: None  
ABSENCES: None



\_\_\_\_\_  
Nancee Robles, Interim Executive Director

Date: November 30, 2022

**QUALIFIED RESIDENTIAL RENTAL PROJECT  
EXHIBIT A**

1. Applicant: City and County of San Francisco
2. Application No.: 22-540
3. Project Sponsor: HPSY 52-54, LP (Rose HPSY 52-54 GP; Bayview Hunters Point Multipurpose Senior Services, Inc.)
4. Property Management Co.: John Stewart Companies
5. Project Name: Hunters Point Shipyard Block 52 and 54
6. Location: San Francisco, CA
7. Private Placement Purchaser: **Bank of America, 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: **110** plus **2** unrestricted manager unit(s)
10. Total Number of Restricted Rental Units: **110**
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.  
**Applicable**

**RESOLUTION NO. 22-237**

**Exhibit A**

Page 2 of 5

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:

At least **110** 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.

At least **0** Qualified Residential units rented or held vacant for rental for persons or families whose income is at 60% of the Area Median Income.

15. Units restricted to households with incomes no greater than **50%** of the Area Median Income in accordance with Section 5191(a) will be distributed as follows:

**Applicable:**

One-bedroom:	<b>5</b>
Two-bedroom:	<b>3</b>
Three-bedroom:	<b>2</b>
Four-bedroom:	<b>1</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) 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) 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.

**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 CCTCAC 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**



**RESOLUTION NO. 22-237**

**Exhibit A**

Page 3 of 5

18. For all acquisition and rehabilitation projects, a minimum of \$15,000 in hard construction costs will be expended for each unit.  
**Not Applicable**
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).  
**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**

**RESOLUTION NO. 22-237**

**Exhibit A**

Page 4 of 5

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 9 points.  
**Applicable**
30. The Project will comply with the Affirmatively Furthering Fair Housing Site Amenity requirements of Section 5230(j)(1). At a minimum, the Project must continue to meet the criteria sufficient to retain 10 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.  
**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: 735**
- 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**
33. Special Needs projects:  
Additional Service Amenity Requirements.  
**Not Applicable**
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**

**RESOLUTION NO. 22-237**

**Exhibit A**

Page 5 of 5

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  
ACCOUNTING SERVICES  
915 Capitol Mall, Room 311  
Sacramento, CA 95814  
(916) 653-3255

**FILING FEE INVOICE**

**PAYMENT IS DUE WITHIN 30 DAYS OF BOND CLOSING**

Date: November 30, 2022

Invoice No.: FY 22-237

Application No.: 22-540

Analyst Initials: NV

To: Elizabeth Colomello  
Development Specialist  
City and County of San Francisco  
1 South Van Ness Avenue, 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: Hunters Point Shipyard Block 52 and 54

ALLOCATION AWARD DATE: November 30, 2022

ALLOCATION AWARD AMOUNT: \$63,000,000

<u>AMOUNT DUE:</u>	Allocation award x .00035	=	\$	22,050.00
	Less initial application fee	=	-\$	1,200.00
	<b>Amount Due</b>	=	<b>\$</b>	<b>20,850.00</b>

**Issuer or bond trustee to complete the following (please use ink):**

The application fee is based on the amount of allocation used to issue bonds. Please complete the following ***only if*** the amount of allocation used is less than the amount of allocation awarded, and remit the ***revised*** amount due.

BOND ISSUANCE DATE:

PRINCIPAL AMOUNT OF BOND ISSUE: \$

AMOUNT OF BOND ALLOCATION USED: \$

<u>REVISED AMOUNT DUE:</u>	Amount issued x .00035	=	\$	
	Less initial application fee	=	-\$	1,200.00
	<b>Revised Amount Due</b>	=	<b>\$</b>	

**PLEASE WRITE APPLICATION NUMBER ON YOUR CHECK, OR  
RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT.**

## 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 5, 2022**.

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 seven (7) consecutive days and the Issuer held the hearing as described in the Notice of Public Hearing on **Tuesday, December 13, 2022 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: **Tuesday, Decemeber 13, 2022 at 3:00PM**

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 Tuesday, December 13<sup>th</sup>, 2022 at 2:00 p.m., by telephone at +1 415-906-4659, access code: 498 180 459#, 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>
\$75,000,000 Tax-Exempt	HPSY 52-54, LP	Jonathan Rose	New Construction	112	151 and 351 Friedell Streets, San Francisco CA
\$97,000,000 Tax-Exempt	730 Stanyan Associates, LP	Chinatown Community Development Center Tenderloin Neighborhood Development Corporation	New Construction	160	730 Stanyan St., San Francisco CA
\$44,000,000 Tax-Exempt	Hunters Point Block 56, L.P.	Mercy Housing	New Construction	73	11 Innes Court, San Francisco CA
\$53,000,000 Tax-Exempt	Sunnydale Block 3A Housing Partners, L.P.	Related California Mercy Housing	New Construction	80	Mid-block of 1500 Sunnydale Avenue, San Francisco CA

\$78,000,000 Tax-Exempt	HV Partners 3, LP	John Stuart Company	New Construction	118	112 Middle Point Road, San Francisco CA
\$78,000,000 Tax-Exempt 501(c)3 Bonds	4200 Geary Associates, L.P.	Tenderloin Neighborhood Development Corporation	New Construction	98	4200 Geary Blvd, San Francisco CA
\$84,000,000 Tax-Exempt Recycled Bonds	Sunnydale Block 3B Housing Partners, L.P.	Related California Mercy Housing	New Construction	90	Mid-block of 1500 Sunnydale Avenue, 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 by telephone only. Interested parties may 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 5, 2022

CITY AND COUNTY OF SAN FRANCISCO  
Eric D. Shaw, Director  
Mayor's Office of Housing and Community  
Development



**EXHIBIT B**  
**EVIDENCE OF PUBLICATION**

**Mayor's Office of Housing and Community Development**  
City and County of San Francisco



**London N. Breed**  
Mayor

**Eric D. Shaw**  
Director

December 14, 2022

**RE: Multiple Projects December 2022 Proof of TEFRA Publication**

To whom it may concern,

I am writing to confirm that the TEFRA notice for the Multiple Projects TEFRA hearing on December 5 was posted on our website's Notices Page on December 5, 8 days prior to the hearing. A screenshot of the posting is on the following page and the Notice itself will also be attached.

If you have any questions, please feel free to contact me (MOHCD Bond Program Manager, William Wilcox), at [william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org).

Sincerely,

*William R Wilcox*

William Wilcox  
Bond Program Manager  
Mayor's Office of Housing & Community Development  
City and County of San Francisco

# MOCHD department notices

## General Notices

- [December 13, 2022 Notice of Public Hearing on Issuance of Multifamily Affordable Housing Mortgage Revenue Bonds](#) (pdf)
- [November 2, 2022 Notice of Public Meeting on Housing and Community Development Needs for 2023-2024](#) (pdf)
- [September 2, 2022 Notice of Availability of Draft 2021-2022 Consolidated Annual Performance and Evaluation Report](#) (pdf)
- [July 25, 2022 Notice of August 3, 2022 public hearing on the proposed sale and issuance by the City of multifamily affordable housing revenue bonds](#) (pdf)

## Related

### [About Community Development](#)

An overview of MOHCD's  
Community Development

### [South of Market Community Stabilization Fund](#)

CITY AND COUNTY OF SAN FRANCISCO

Public Hearing as required by Section 147(f) of the Internal Revenue Code of 1986

Multiple Projects

Date: December 13, 2022

Time: 2:00 PM

Location: Telephone (USA Toll Free: +1 415-906-4659, access code: 498 180 459#)

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>
\$75,000,000 Tax-Exempt	HPSY 52-54, LP	Jonathan Rose	New Construction	112	151 and 351 Friedell Streets, San Francisco CA
\$97,000,000 Tax-Exempt	730 Stanyan Associates, LP	Chinatown Community Development Center Tenderloin Neighborhood Development Corporation	New Construction	160	730 Stanyan St., San Francisco CA
\$44,000,000 Tax-Exempt	Hunters Point Block 56, L.P.	Mercy Housing	New Construction	73	11 Innes Court, San Francisco CA
\$53,000,000 Tax-Exempt	Sunnydale Block 3A Housing Partners, L.P.	Related California Mercy Housing	New Construction	80	Mid-block of 1500 Sunnydale Avenue, San Francisco CA
\$78,000,000 Tax-Exempt	HV Partners 3, LP	John Stuart Company	New Construction	118	112 Middle Point Road, San Francisco CA

\$78,000,000 Tax-Exempt 501(c)3 Bonds	4200 Geary Associates, L.P.	Tenderloin Neighborhood Development Corporation	New Construction	98	4200 Geary Blvd, San Francisco CA
\$84,000,000 Tax-Exempt Recycled Bonds	Sunnydale Block 3B Housing Partners, L.P.	Related California Mercy Housing	New Construction	90	Mid-block of 1500 Sunnydale Avenue, San Francisco CA

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.

The hearing was adjourned at 2:30 PM.

Minutes prepared by: William R Wilcox  
Date: December 13, 2022 William Wilcox

Exhibit A

**Multiple Projects  
TEFRA Hearing  
SIGN-IN SHEET**

**Tuesday, December 13, 2022 - 2:00 pm**

Name	Organization	e-mail address
Paige Peltzer	Related California	<a href="mailto:ppeltzer@related.com">ppeltzer@related.com</a>
Hermandeep Kaur	Tenderloin Neighborhood Development Corporation	<a href="mailto:hkaur@tndc.org">hkaur@tndc.org</a>
Riley Jones	Mercy Housing	<a href="mailto:Riley.Jones@mercyhousing.org">Riley.Jones@mercyhousing.org</a>
Cindy Heavens	MOHCD	<a href="mailto:cindy.heavens@sfgov.org">cindy.heavens@sfgov.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>
Sarah White	Jonathan Rose Companies	<a href="mailto:swhite@rosecompanies.com">swhite@rosecompanies.com</a>
Julie Mendel	John Stuart Company	<a href="mailto:jmendel@jsco.net">jmendel@jsco.net</a>
Fiona Ruddy	Mercy Housing	<a href="mailto:Fiona.Ruddy@mercyhousing.org">Fiona.Ruddy@mercyhousing.org</a>
Jasmine Kuo	OCII	<a href="mailto:jasmine.kuo@sfgov.org">jasmine.kuo@sfgov.org</a>
Lagi Tevaseu	Chinatown Community Development Center	<a href="mailto:lagi.tevaseu@chinatowncdc.org">lagi.tevaseu@chinatowncdc.org</a>
Sarah Graham	San Francisco Housing Development Corporation	<a href="mailto:sarah.graham@sfhdc.org">sarah.graham@sfhdc.org</a>



## 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 #: 230317

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>
Jasmine Kuo	415-749-2422
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
CII Office of Community Inv. and Infr.	jasmine.kuo@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> HPSY 52-54, L.P.	<b>TELEPHONE NUMBER</b> 818-726-4725
<b>STREET ADDRESS (including City, State and Zip Code)</b> 551 Fifth Avenue, 23rd Floor New York, NY 10176	<b>EMAIL</b> acampbell@rosecompanies.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> 230317
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$63,000,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Bond/4% LIHTC Financing for 351 Friedell Street and 151 Friedell Street 112-unit Affordable Housing Project. Developed by a joint partnership involving Jonathan Rose Companies (JRC) and Bayview Hunters Point Multipurpose Senior Services (BHPMSS).		

7. COMMENTS

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	Rose	Jonathan	CEO
2	Taft	Nathan	Other Principal Officer
3	Vary	Caroline	COO
4	James	Oscar	Other Principal Officer
5	Elias-Jackson	Jo- Theresa	Board of Directors
6	Hastings	Sammy	Board of Directors
7	Richardson	Linda Fadeke	Board of Directors
8	Osby-Bell	Jeanne	Board of Directors
9	Tugbenyoh	Mawuli	Board of Directors
10	Davis	Cathy	Other Principal Officer
11			
12			
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**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
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**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
39			
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41			
42			
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50			

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.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Nickolopoulos, Sheila \(MYR\)](#); [Geithman, Kyra \(MYR\)](#); [Gluckstein, Lisa \(MYR\)](#); [Kuo, Jasmine \(CI\)](#)  
**Subject:** Mayor -- Resolution -- Hunters Point Shipyard Blocks 52/54 Bond Issuance  
**Date:** Tuesday, March 21, 2023 4:32:56 PM  
**Attachments:** [Mayor -- Resolution -- Hunters Point Shipyard Blocks 5254 Bond Issuance.zip](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving for purposes of the Internal Revenue Code of 1986, as amended, and authorizing the execution and delivery of a multifamily housing revenue note in one or more series in an aggregate principal amount not to exceed \$63,000,000 for the purpose of providing financing for the acquisition and construction of a 112-unit multifamily rental housing project located at 151 and 351 Friedell Street; approving the form of and authorizing the execution of a funding loan agreement; providing the terms and conditions of the loan from the funding lender to the City, and the execution and delivery of the note; approving the form of and authorizing the execution of a project loan agreement; providing the terms and conditions of the loan from the City to the Borrower; approving the form of and authorizing the execution of two regulatory agreements and declaration of restrictive covenants; authorizing the collection of certain fees; approving modifications, changes, and additions to the documents; ratifying and approving any action heretofore taken in connection with the back-to-back loans, the note and the project; granting general authority to City officials to take actions necessary to implement this Resolution, as defined herein; and related matters, as defined herein.

Best,  
Susanna

Susanna Conine-Nakano  
Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147