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**EXHIBIT D(1) TO FORWARD PURCHASE AGREEMENT**

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**AMENDED AND RESTATED  
FUNDING LOAN AGREEMENT**

among

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

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

and

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

Relating to

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

Dated as of \_\_\_\_\_ 1, 20\_\_

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## FUNDING LOAN AGREEMENT

**THIS FUNDING LOAN AGREEMENT**, dated as of \_\_\_\_\_ 1, 20\_\_ (this “Funding Loan Agreement”), is made and entered into by **CITIBANK, N.A.** (together with any successor hereunder, the “Funding Lender”), the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, the “Governmental Lender”), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, as fiscal agent (the “Fiscal Agent”).

### WITNESSETH:

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

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

WHEREAS, 160 Freelon Housing Partners, L.P., a California limited partnership (the “Borrower”), previously requested that the Governmental Lender enter into a Funding Loan Agreement dated as of June 1, 2025 (the “Construction Funding Loan Agreement”), among Bank of America, N.A., a national banking association (the “Initial Funding Lender”), the Governmental Lender and the Fiscal Agent, under which the Initial Funding Lender (a) advanced funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (b) applied the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition, construction, rehabilitation and development of a multifamily rental housing development located in the City known as “160 Freelon” (the “Project”); and

WHEREAS, simultaneously with the delivery of the Construction Funding Loan Agreement, the Governmental Lender and the Borrower entered into a Borrower Loan Agreement dated as of June 1, 2025 (the “Construction Borrower Loan Agreement”), whereby the Borrower agreed to make loan payments to the Governmental Lender in an amount which, when added to other funds available under the Construction Funding Loan Agreement, would be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Construction Borrower Loan Agreement, the Borrower executed and delivered to the Governmental Lender its Promissory Note (Tax-Exempt Loan) dated [Closing Date, 2025] (the “Tax-Exempt Construction Borrower Note”) and

its Promissory Note (Taxable) dated [Closing Date, 2025] (the “Taxable Construction Borrower Note” and together with the Tax-Exempt Construction Borrower Note, the “Construction Borrower Notes”), and the obligations of the Borrower under the Construction Borrower Notes were secured by a lien on and security interest in the Project pursuant to a Construction Leasehold Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing, dated as of [Closing Date, 2025] (as may be supplemented or amended, the “Construction Security Instrument”), made by the Borrower in favor of the Governmental Lender, as assigned to the Fiscal Agent for the benefit of the Initial Funding Lender to secure, among other things, the performance by the Governmental Lender of its obligations under the Construction Funding Loan Agreement; and

WHEREAS, the Governmental Lender executed and delivered to the Initial Funding Lender its (a) Multifamily Housing Revenue Note (160 Freelon), Series 2025D-1, in the original maximum principal amount of \$\_\_\_\_\_ (the “Tax-Exempt Governmental Lender Note”) and (b) Multifamily Housing Revenue Note (160 Freelon), Taxable Series 2025D-2, in the original maximum principal amount of \$\_\_\_\_\_ (the “Taxable Governmental Lender Note”), each dated the Closing Date, collectively evidencing its limited obligation to make the payments due to the Initial Funding Lender under the Funding Loan as provided in the Construction Funding Loan Agreement; and

WHEREAS, as security for the Funding Loan, the Governmental Lender assigned all of its interests, except for the Unassigned Rights, in the Borrower Loan and the Construction Borrower Notes to the Fiscal Agent for the benefit of the Initial Funding Lender, for security purposes only; and

WHEREAS, the Borrower, Initial Funding Lender and the Funding Lender, entered into that Forward Purchase Agreement dated as of June 1, 2025 (as may be amended, the “Forward Purchase Agreement”), pursuant to which the Funding Lender agreed to acquire up to \$\_\_\_\_\_ principal amount of the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note upon satisfaction of the terms and conditions set forth therein; and

WHEREAS, as a condition of the Funding Lender’s purchase of the Initial Funding Lender’s remaining interests in the Tax-Exempt Governmental Lender Note, Funding Loan, Borrower Loan and Tax-Exempt Construction Borrower Note, the Funding Lender requires that the Governmental Lender, Fiscal Agent and Borrower enter into certain agreements, including this Funding Loan Agreement, to amend and restate the Construction Funding Loan Agreement, the Construction Borrower Loan Agreement, the Construction Security Instrument, and the Tax-Exempt Construction Borrower Note; and

WHEREAS, all of the Conditions to Closing (as defined in the Forward Purchase Agreement), including the prepayment in full of the Taxable Construction Borrower Note by the Borrower and resulting prepayment in full of the Taxable Governmental Lender Note and the prepayment in part of the Tax-Exempt Construction Borrower Note by the Borrower and resulting prepayment in part of the Tax-Exempt Governmental Lender Note, and all of the other conditions of Funding Lender’s purchase of the Funding Loan set forth in the Forward Purchase Agreement have been or as of the Conversion Date will be satisfied; and

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a “conduit issuer” and the Funding Loan and the Governmental

Lender Note will continue to be limited obligations of the Governmental Lender as described in Article V hereof; and

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

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

## **ARTICLE I**

### **DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

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

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

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

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

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

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

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

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

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

“*Acr*” shall have the meaning assigned to such term in the recitals above.

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

“*Affiliate*” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“*Approved Transferee*” shall mean (a) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (b) an Affiliate of the Funding Lender, (c) a trust or custodial arrangement established by the Funding Lender or one of its affiliates or any state or local government or any agency or entity which is a political subdivision of a federal, state or local government (a “Governmental Entity”), in each case the beneficial interests in which will be (i) owned only by QIBs or (ii) rated in the “BBB” category or higher without regard to modifier (or the equivalent investment grade category) by at least one nationally recognized rating agency, or (d) a Governmental Entity.

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

“*Borrower*” shall mean 160 Freelon Housing Partners, L.P., a California limited partnership.

“*Borrower Loan*” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Construction Borrower Loan Agreement in the original aggregate principal amount of \$\_\_\_\_\_, outstanding on the Conversion Date in the aggregate principal amount of \$[\_\_\_\_\_], as evidenced by the Borrower Note.

“*Borrower Loan Agreement*” shall mean the Amended and Restated Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

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

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

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



“*Business Day*” shall mean any day other than (a) a Saturday or a Sunday, (b) a day on which federally insured depository institutions in the State or in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed or (c) a State holiday when the Governmental Lender is authorized or obligated to be closed.

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

“*Closing Date*” shall mean [Closing Date, 2025], the day on which the Funding Loan was originated by the Initial Funding Lender.

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

“*Control*” shall mean, with respect to any Person, either (a) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“*Conversion Date*” shall mean [\_\_\_\_, 20\_\_], the date upon which the Funding Lender purchases the Tax-Exempt Governmental Lender Note from the Initial Funding Lender and assumes the role of the Funding Lender under the Funding Loan Documents.

“*Covenant Agreement*” means that certain Loan Covenant Agreement of even date herewith, between the Funding Lender and Borrower, setting forth certain provisions relating to the Borrower Loan, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“*Construction Funding Loan Agreement*” shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

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

“*Equity Investor*” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“*Expense Fund*” means the Expense Fund established by the Fiscal Agent pursuant to Section 7.5 hereof.

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

“*Fiscal Agent’s Fees*” shall mean the ongoing annual compensation and expenses of the Fiscal Agent in the amount of \$[3,000] per annum, payable annually in arrears on each June 1, commencing [June 1, 2026]. The Fiscal Agent reserves the right to increase its annual fee from time to time.

“*Fitch*” shall mean Fitch, Inc., its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any

reason, the term “Fitch” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“*Forward Purchase Agreement*” shall mean the Forward Purchase Agreement described in the recitals of this Funding Loan Agreement.

“*Funding Lender*” shall mean Citibank, N.A., a national banking association, and any successor under this Funding Loan Agreement and the other Funding Loan Documents.

“*Funding Loan*” shall have the meaning assigned to such term in the recitals above.

“*Funding Loan Agreement*” shall mean this Amended and Restated Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent as it may from time to time be supplemented, modified or amended by one or more instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

“*Funding Loan Documents*” shall mean (a) this Funding Loan Agreement, (b) the Borrower Loan Agreement, (c) the Governmental Lender Note, (d) the Regulatory Agreement, (e) the Tax Certificate, (f) the Borrower Loan Documents, (g) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (h) all amendments, modifications, renewals and substitutions of any of the foregoing.

“*GAAP*” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

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

“*Governmental Lender Note*” shall mean that certain City and County of San Francisco, California, Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1 dated [the Closing Date] in the outstanding principal amount of \$[\_\_\_\_\_] on the Conversion Date made by the Governmental Lender and payable to the Funding Lender, as it may be amended or replaced from time to time.

“*Highest Rating Category*” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating category given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for three months or less and “Aaa” for greater than three months. If at any time (a) both S&P and Moody’s rate a Permitted Investment and (b) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a

Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“*Initial Funding Lender*” shall mean Bank of America, N.A., a national banking association, and any successor, including the Funding Lender, under this Funding Loan Agreement and the other Funding Loan Documents.

“*Maturity Date*” shall mean [July 1, 2059].

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

“*Minimum Beneficial Ownership Amount*” shall mean \$250,000.

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

“*Note Payment Fund*” means the Note Payment Fund established by the Fiscal Agent pursuant to Section 7.4 hereof.

“*Ongoing Governmental Lender Fee*” shall mean ongoing fee of the Governmental Lender in the amount set forth in Section 17 of the Regulatory Agreement.

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

“*Permanent Period Amount*” shall mean \$[\_\_\_\_\_], the principal amount of the Funding Loan under this Funding Loan Agreement as of the Conversion Date.

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

(i) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).

(j) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(k) Demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not

less than \$50,000,000 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s/S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency.

(l) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(m) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Fiscal Agent or its affiliates.

(n) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the “A” category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the “Collateral Agent”), and the Collateral Agent cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities). Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and the Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(o) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(i) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (i) shall not apply to Permitted Investments listed in paragraph (g) above.

(ii) Any obligation bearing interest at an inverse floating rate.

(iii) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(iv) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

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

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

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

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

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

“*Rebate Fund*” shall mean the Rebate Fund established by the Fiscal Agent pursuant to Section 7.8 hereof.

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

“*Regulatory Agreement*” shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of June 1, 2025, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

“*Required Transferee Representations*” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

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

“*Responsible Officer*” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions

similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

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

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

“*Security Instrument*” shall have the meaning given to such term in the Borrower Loan Agreement.

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

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

“*S&P*” shall mean S&P Global Ratings, a Standard & Poor’s Financial Services LLC business division, its successors and assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the functions of a securities rating agency for any reason, the term “*S&P*” will be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“*State*” shall mean the State of California.

“*Tax Certificate*” shall mean, collectively, (a) the Tax Certificate dated the Closing Date, executed and delivered by the Governmental Lender, (b) the Borrower’s Use of Proceeds Certificate dated the Closing Date, and (iii) the Post-Issuance Compliance Certificate executed by the Governmental Lender and the Borrower on the Closing Date, in each case, including all exhibits and other attachments thereto and, in each case, as may be amended, modified, supplemented and replaced from time to time.

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

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

“*Tax Counsel No Adverse Effect Opinion*” shall mean an opinion of Tax Counsel substantially to the effect that the taking of the action specified therein will not, in and of itself, adversely affect any exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

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

“*Unassigned Rights*” shall mean the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.17 thereof, its rights to be held harmless and indemnified under Section 5.15 thereof, its rights to attorneys’ fees under Sections 5.11, 5.13, 5.14 and 5.15 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement, and the Governmental Lender’s indemnification and enforcement rights, including but not limited to, rights to reimbursement and payment of fees, costs and expenses under the Regulatory Agreement.

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

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

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

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

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

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

**Section 1.6. Restatement of Construction Funding Loan Agreement.** The parties hereto do hereby amend and restate the Construction Funding Loan Agreement. From and after the effective date hereof, this Funding Loan Agreement shall amend, restate and replace in its entirety the Construction Funding Loan Agreement.

## ARTICLE II

### TERMS; GOVERNMENTAL LENDER NOTE

#### Section 2.1. Terms.

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

(b) **[Reserved].**

(c) **[Reserved].**

(d) **Origination Date; Maturity.** The Funding Loan was originated by Bank of America, N.A. on the Closing Date, acquired by the Funding Lender on the Conversion Date, and shall mature on the Maturity Date, at which time the entire principal amount of the Funding Loan, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(e) **Principal.** The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the Permanent Period Amount, less any payments of principal of the Governmental Lender Note previously received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (e) and in paragraphs (f) and (g) of this Section 2.1.

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

(f) **Interest.** Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement; provided, however, that in no event shall interest paid on the Governmental Lender Note exceed the Maximum Rate.

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

(h) **Usury.** The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the



Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

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

**Section 2.2. Form of Governmental Lender Note.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

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

**Section 2.4. Authentication.** The Governmental Lender Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Lender Note shall have been duly executed by the Fiscal Agent and such executed certificate of authentication upon the Governmental Lender Note shall be conclusive evidence that the Governmental Lender Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.5. Required Transferee Representations; Participations; Sale and Assignment.**

(a) In connection with its acquisition of the Governmental Lender Note, the Funding Lender shall deliver to the Governmental Lender the signed Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Conversion Date.

(b) The Funding Lender may not sell or assign the Governmental Lender Note and the Funding Loan except in whole to an Approved Transferee who agrees to become the "Funding

Lender” under the Funding Loan Documents and assume all of the obligations and perform all of the duties of the Funding Lender thereunder, but the Funding Lender shall have the right to sell participation interests or other beneficial ownership interests in the Governmental Lender Note and the Funding Loan in amounts that are no less than the Minimum Beneficial Ownership Amount, and provided further that the Governmental Lender Note and the Funding Loan or such participation interests therein shall be sold only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender, the Required Transferee Representations; provided, however, that no Required Transferee Representations shall be required to be delivered by transferees or beneficial interest holders described in clauses (c) or (d) of the definition of “Approved Transferee,” and provided further, that beneficial ownership interests in the Governmental Lender Note and Funding Loan described in clause (c) of the definition of “Approved Transferee” may be sold in any amount equal to or greater than \$100,000 without regard to the Minimum Beneficial Ownership Amount, and provided further, that any transfers to transferees described in clauses (c) or (d) of the definition of “Approved Transferee” shall be conditioned upon (i) the prior written approval of the Governmental Lender or (ii) (A) the receipt by Governmental Lender of a written request from the Funding Lender to approve such a transfer, which request shall expressly state (1) the name and a brief description of the proposed transferee(s), (2) the expected credit ratings on any interests or participations in, or other securities of, the proposed transferee, (3) a description of the restrictions on the purchase of interests or participations in, or other securities of, the proposed transferee, (4) the deadline to respond, which shall be not less than thirty (30) days from receipt of such request, and (5) an express cross reference to this Section 2.5(b), and (B) the Governmental Lender shall have failed to send to the Funding Lender by the aforesaid deadline notice in accordance with Section 12.1 that such request has been rejected or that additional information or time is needed to consider such request and the length of time so needed.

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

(d) The Governmental Lender Note shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Fiscal Agent for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(e) The parties agree that a rating will not be sought for the Governmental Lender Note or the Funding Loan from any rating agency.

### ARTICLE III

#### PREPAYMENT

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

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

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

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

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

## ARTICLE IV

### SECURITY

**Section 4.1. Security for the Funding Loan.** To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the terms and provisions of this Funding Loan Agreement and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender confirms its earlier assignment of similar rights to the Initial Funding Lender and, to the extent any of such rights have been reassigned to the Governmental Lender, by these presents does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Fiscal Agent and to the Funding Lender, as their interests may appear (except as limited herein), for the benefit of the holder from time to time of the Governmental Lender Note, a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived thereunder by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments (except those related to the Unassigned Rights) derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or

diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by the Fiscal Agent under this Funding Loan Agreement (other than any amounts held in the Expense Fund and the Rebate Fund) subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent or the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof. The Funding Lender shall have, in connection with the security interest granted hereunder, all rights and remedies available to a secured party under the Uniform Commercial Code as enacted in the State.

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

(a) The Borrower Note;

(b) The originally executed Borrower Loan Agreement;

(c) A copy of the Security Instrument and all other Borrower Loan Documents to be executed as of the Conversion Date;

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

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

The Governmental Lender shall deliver and deposit with the Fiscal Agent or the Funding Lender, at the expense of the Borrower, such additional documents, financing statements, and instruments as the Fiscal Agent, at the direction of the Funding Lender or the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Fiscal Agent of its lien and security interest in and to the Security.

## **ARTICLE V**

### **LIMITED LIABILITY**

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

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

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

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

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

**Section 5.2. Exemption From Individual Liability.** No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any past, present or future mayor, supervisor, commissioner, officer, director, employee or agent of the Governmental Lender in his individual capacity, and neither the mayor, supervisors, commissioners, the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Note or this Funding Loan Agreement shall be liable personally on the Governmental Lender Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Note or the execution of this Funding Loan Agreement.

## ARTICLE VI

### CLOSING CONDITIONS; APPLICATION OF FUNDS

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

(a) Receipt by the Funding Lender of the original executed replacement Governmental Lender Note, authenticated by the Fiscal Agent;

(b) Receipt by the Fiscal Agent of the original executed Borrower Note;

(c) Receipt by the Fiscal Agent of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement and the Security Instrument;

(d) Receipt by the Fiscal Agent and the Governmental Lender of an executed Required Transferee Representations from the Funding Lender;

(e) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the purchase of the Governmental Lender Note by the Funding Lender;

(f) Receipt by the Funding Lender and the Governmental Lender of a Tax Counsel No Adverse Effect Opinion; and

(g) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender, the Governmental Lender or Tax Counsel may reasonably require in connection with the Funding Lender's purchase of the Governmental Lender Note pursuant to the Forward Purchase Agreement.

## ARTICLE VII

### FUNDS AND ACCOUNTS

**Section 7.1. Authorization To Create Funds and Accounts.** Except as provided in Section 7.3 hereof, no other funds or accounts have been or shall be established in connection with the Funding Loan. The Funding Lender, the Fiscal Agent (as directed by the Funding Lender), and the Servicer, if any, and any designee of the Funding Lender or the Servicer, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, the Fiscal Agent, or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 7.2. Investment of Funds.** Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested by the Funding Lender, the Servicer or the designee of the Funding Lender or the Servicer, as applicable, in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Certificate. Amounts held in any funds or accounts created under this Funding Loan Agreement and held by the Fiscal Agent shall be invested in Permitted Investments at the written direction of the Borrower, which shall provide such directions in all cases subject to the restrictions of Section 8.7 hereof and of the Tax Certificate. In the absence of such directions, the Fiscal Agent shall hold funds uninvested.

The Fiscal Agent may make any and all investments permitted under this Funding Loan Agreement through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Fiscal Agent and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Permitted Investments under this Funding Loan Agreement. The Fiscal Agent shall not be liable for any losses from investments made by the Fiscal Agent in accordance with this Funding Loan Agreement. Interest earnings from any investments made in any funds or accounts hereunder shall be deposited in the respective fund or account.

The Governmental Lender, the Funding Lender and the Borrower (by its execution of the Borrower Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Governmental Lender or the Funding Lender the right to receive brokerage confirmations of security transactions as they occur, the Governmental

Lender and the Funding Lender will not receive such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

**Section 7.3. Establishment of Funds.** The following funds and accounts were established with the Fiscal Agent at the time of the origination of the Funding Loan and will remain open from and after the Conversion Date:

- (a) The Note Payment Fund;
- (b) [Reserved];
- (c) The Expense Fund;
- (d) [Reserved]; and
- (e) The Rebate Fund.

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

All money to be deposited with or paid to the Fiscal Agent shall be wired to the Fiscal Agent pursuant to the wiring instructions contained in Exhibit F attached hereto. The Fiscal Agent shall provide Written Notice of any change to such wiring instructions to the Funding Lender and the Borrower no less than five Business Days prior to the next payment date for which such revised instructions will be applicable.

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

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

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

FIRST, to pay or provide for the payment of the interest then due on the Funding Loan to the registered owner of the Governmental Lender Note;



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

THIRD, to pay or provide for the payment of the Funding Loan on the Maturity Dates to the registered owner of the Governmental Lender Note.

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

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

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

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

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

**Section 7.6. [Reserved].**

**Section 7.7. [Reserved].**

**Section 7.8. Rebate Fund.** The Fiscal Agent shall establish the Rebate Fund when instructed to deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto pursuant to Section 5.35 of the Borrower Loan Agreement.

## ARTICLE VIII

### REPRESENTATIONS AND COVENANTS

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

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

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Governmental Lender Note or the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws). For purposes of this Section 8.1(b), "to its knowledge" means the current, actual knowledge of any Authorized Governmental Lender Representative.

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

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

(e) The California Debt Limit Allocation Committee previously provided an allocation of the State's 2024 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the Governmental Lender Note, and the Governmental Lender timely made any required carry forward election with respect to such volume cap allocation. The Governmental Lender elected to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, previously directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by Section 3.03 of said Notice.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR THE BORROWER LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

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

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

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

**Section 8.5. Borrower Loan Agreement Performance.**

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

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

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

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

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

**Section 8.7. Tax Covenants.** The Governmental Lender covenants to and for the benefit of the Fiscal Agent and the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will (subject to the limited liability provisions hereof):

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered by the Governmental Lender, to the extent necessary in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Governmental Lender Note will be excluded from the gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(b) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions, which would cause the interest payable on the Tax-Exempt Governmental Lender Note to be includable in gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(c) Whenever and so often as requested by the Funding Lender (at the sole cost and expense of the Borrower), do and perform all acts and things permitted by law and necessary in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Governmental Lender Note will be excluded from the gross income of the holders of the Tax-Exempt Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Tax-Exempt Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(d) Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, not knowingly

take any action, or knowingly permit or suffer any action to be taken, if the result of the same would be to cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

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

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

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower executed, delivered and will comply with the provisions of the Tax Certificate and Section 2 in the Regulatory Agreement, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full. In the event of any conflict between this Section 8.7 and the requirements of the Tax Certificate, the Tax Certificate shall control.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

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

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

**Section 8.9. Maintenance of Records.** The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan established with the Funding Lender, if any, including all deposits to and disbursements from said funds and accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

**Section 8.10. Immunities and Limitations of Responsibility of Governmental Lender.**

(a) The Governmental Lender shall be entitled to the advice of counsel, and the Governmental Lender shall be wholly protected as to action taken or omitted in reliance on such advice. The Governmental Lender may rely conclusively on any written notice or other document furnished to

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

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

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

## ARTICLE IX

### DEFAULT; REMEDIES

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

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

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

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender

and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the 30-day cure period and the subject matter of the default is not capable of cure within said 30-day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payment; or

(e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

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

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

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

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

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

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

(c) At any time following the third anniversary of the occurrence of an Event of Default and acceleration of the Funding Loan, the Governmental Lender may elect to pay the Funding Loan and the Governmental Lender Note by transferring and assigning the Security to the Funding

Lender, and upon such transfer the Funding Lender shall have no further rights against the Governmental Lender hereunder and such payment shall constitute payment in full of the Funding Loan and the Governmental Lender Note.

The Funding Lender hereby agrees that upon such transfer and assignment the Funding Lender shall no longer look to the Governmental Lender to receive payment of the principal and interest and all other sums, if any, which are due under the Governmental Lender Note, but shall look solely to the Security, the rights under the Security to enforce the indebtedness and other obligations of the Borrower and the other parties, and the funds and other assets transferred to the Funding Lender hereunder.

(d) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that neither the Fiscal Agent nor the Funding Lender shall pursue any remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

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

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

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

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

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

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the



Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

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

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, or the Fiscal Agent at the direction of the Funding Lender, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Tax-Exempt Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower, the Fiscal Agent and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default (with a copy of such Written Notice provided to the Equity Investor), the Funding Lender, or the Fiscal Agent at the direction of the Funding Lender, shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

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

(f) Equity Investor to have the right to cure within any applicable cure period any default of the Borrower as described in Sections 9.3(d) and (e) above, and the Funding Lender shall accept any such cure as if performed by Borrower.

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

(a) First, to the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Rebate Analyst;

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

(c) Third, to the payment of the amounts required to reimburse the Governmental Lender and the Funding Lender for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

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

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

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

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

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

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

pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

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

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

**Section 9.11. Waiver of Appraisal and Other Laws.**

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

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

**Section 9.12. Suits To Protect the Security.** The Funding Lender, or the Fiscal Agent at the direction of the Funding Lender, shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

**Section 9.13. Remedies Subject to Applicable Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and

to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

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

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

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

## **ARTICLE X**

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

**Section 10.1. Amendment of Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender; provided, however, no such amendment which materially adversely affects the rights, duties, or obligations of the Borrower shall be made without the consent of the Borrower and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender, the Fiscal Agent or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender, the Governmental Lender, and the Fiscal Agent.

**Section 10.2. Amendments Require Funding Lender Consent.** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of the Borrower

Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender or the Fiscal Agent at the direction of the Funding Lender.

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

## **ARTICLE XI**

### **THE FISCAL AGENT**

**Section 11.1. Appointment of Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints U.S. Bank Trust Company, National Association as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

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

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

(b) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

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

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

(iv) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The Fiscal Agent will not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other parties, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to any project financed with the proceeds of the Governmental Lender Note, malicious mischief, condemnation, and unusually severe weather or any similar event and/or occurrences beyond the control of the Fiscal Agent.

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

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

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

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

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

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

**Section 11.8. Compensation and Reimbursement.** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct.

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

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



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

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

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

**Section 11.10. Resignation and Removal; Appointment of Successor.**

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

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

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

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after the later of such resignation, removal or incapability or the occurrence of such vacancy and receipt of written notice of such by the Governmental Lender, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender.

(from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

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

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

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

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

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

**Section 11.13. Appointment of Co-Fiscal Agent.** It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent

or hold title to the properties, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to it such properties, rights, powers, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co-Fiscal Agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

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

**Section 11.15. No Recourse With Respect to Governmental Lender.** Notwithstanding anything to the contrary herein or to the contrary in any Funding Loan Document, no recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Lender Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Lender Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loans hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. The Funding Lender's remedies in the event of a default under the

Funding Loans shall be limited to those remedies set forth herein and, if an Event of Default also exists under the Borrower Loan Agreement or the Borrower Note, to commence foreclosure under the Security Instrument and the other Borrower Loan Documents and to exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under the Governmental Lender Note, the Funding Lender shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender, the Funding Lender or the Servicer may have against the Borrower.

## ARTICLE XII

### MISCELLANEOUS

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

If to the Governmental Lender:      City and County of San Francisco  
Mayor's Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Director  
Facsimile: (415) 701-5501

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

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

If to the Borrower:                      160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
44 Montgomery Street, Suite 1310  
San Francisco, CA 94104  
Attention: Ann Silverberg, President

And a copy to: 160 Freelon Housing Partners, L.P.  
c/o The Related Companies of California, LLC  
18201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: Asset Management

And a copy to: SFHDC 160 Freelon LLC  
c/o San Francisco Housing Development  
Corporation  
4439 Third Street  
San Francisco, CA 94124  
Attention: David J. Sobel  
Email: david@sfhdc.org

With copies to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, Suite 5880  
Los Angeles, CA 90071  
Facsimile: (213) 559-0751  
Attention: Nicole Deddens

Goldfarb & Lipman LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Lynn Hutchins  
Email: lhutchins@goldfarblipman.com

And a copy to: Bank of America, N.A.  
100 Federal Street, 4<sup>th</sup> Floor  
Mailcode: MA5-100-04-11  
Boston, MA 02110  
Attn: Asset Management

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

With a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Ste 1500  
Los Angeles, CA 90017  
Attention: Michael Williamson, Esq.  
Email: mwilliamson@buchalter.com

If to the Funding Lender:	Citibank, N.A. 388 Greenwich Street, 4th Floor Trading New York, NY 10013 Attention: Transaction and Asset Management Group Deal ID# _____ Facsimile: (212) 723-8209
With copies to:	Citibank, N.A. Transaction and Asset Management Group/Post Closing Citi Community Capital 3800 Citibank Center Tampa, Florida 33610 Deal ID# _____
and to:	Citibank, N.A. c/o Berkadia Commercial Servicing Department 323 Norristown Road, Suite 300 Ambler, PA 19002 Attention: Client Relations Manager Deal ID # _____ Facsimile: (215) 328-0305
And a copy of any notices of default sent to:	Citibank, N.A. 388 Greenwich Street, 17th Floor New York, NY 10013 Attention: General Counsel's Office Deal ID # _____ Facsimile: (646) 291-5754

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

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

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

**Section 12.2. Term of Funding Loan Agreement.** This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the rights of the Governmental Lender to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and termination of this Funding Loan Agreement pursuant to this Section.

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

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

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

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

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

**Section 12.8. Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to Section 4.1.36 of the Borrower Loan Agreement or other provisions of the Borrower Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

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

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

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

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

**Section 12.12. Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of \_\_\_\_\_ 1, 20\_\_ and will not be effective and binding upon the parties hereto unless and until the Conversion Date occurs.

[Remainder of page intentionally left blank]



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

CITIBANK, N.A., as Funding Lender

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

[Signature Page to 160 Freelon Funding Loan Agreement]

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

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

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

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

[Signature Page to 160 Freelon Funding Loan Agreement]

CITY AND COUNTY OF SAN FRANCISCO, as  
Governmental Lender

By: \_\_\_\_\_  
Daniel Adams, Director  
Mayor's Office of Housing and Community  
Development

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Kenneth D. Roux, Deputy City Attorney

## EXHIBIT A

### FORM OF GOVERNMENTAL LENDER NOTE

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

City and County of San Francisco  
Multifamily Housing Revenue Note  
(160 Freelon)  
Series 2025D-1

Dated [\_\_\_\_], 20\_\_

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned City and County of San Francisco ("Obligor") promises to pay to the order of CITIBANK, N.A. (together with its successors and assigns, "Holder") solely from the amounts pledged therefore under the below-defined Funding Loan Agreement, the maximum principal sum of \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED \_\_\_\_\_ THOUSAND DOLLARS (\$ \_\_\_\_\_) on \_\_\_\_\_ 1, 20\_\_, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_ (the "Funding Loan Agreement"), among Obligor, U.S. Bank Trust Company, National Association, as fiscal agent (the "Fiscal Agent") and Holder, an amount in immediately available funds sufficient to pay the principal amount of the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts are derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on this Governmental Lender Note in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid.

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

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a permanent loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to 160 Freelon Housing Partners, L.P., a California limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_ (as the same may be

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

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. None of the Obligor, the State, or any political subdivision thereof (except the Obligor, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on this Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever except as set forth herein, and neither this Governmental Lender Note or any of the Obligor’s agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. Neither the faith and credit nor the taxing power of the Obligor is pledged to the payment of the principal of or premium or interest on this Governmental Lender Note.

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

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

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

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

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

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be

cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

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

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

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

[Remainder of page intentionally left blank]

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

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

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

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By \_\_\_\_\_  
Kenneth D. Roux, Deputy City Attorney

## **CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is the Governmental Lender Note described in the within mentioned Funding Loan Agreement.

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

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

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



## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[\_\_\_\_], [\_\_\_\_]

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

[\_\_\_\_]  
[Location]

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

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

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

The undersigned, as holder (the "Holder") of the funding loan (the "Funding Loan") in the aggregate maximum principal amount of \$\_\_\_\_\_ from **CITIBANK, N.A.** (the "Funding Lender") to the **CITY AND COUNTY OF SAN FRANCISCO** (the "Governmental Lender") under an Amended and Restated Funding Loan Agreement dated as of \_\_\_\_\_ 1, 20\_\_ (the "Funding Loan Agreement") among the Funding Lender, the Governmental Lender, and U.S. Bank Trust Company, National Association, as fiscal agent, which Funding Loan is evidenced by the Multifamily Housing Revenue Note (160 Freelon) Series 2025D-1 (the "Governmental Lender Note") issued under the Funding Loan Agreement, hereby represents and warrants that:

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

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information of the Borrower, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning

the Governmental Lender, the Project, the Borrower, the use of proceeds of the Funding Loan, the Governmental Lender Note and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Funding Loan [or an interest therein] and the Governmental Lender Note. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Note.

3. The Holder is an Approved Transferee.

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

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

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

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

[Signature Page to Required Transferee Representations]

[ ], as Holder

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

## EXHIBIT C

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

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

1. Nondiscrimination Requirements.

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

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. The Obligated Party does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

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

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

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Obligated Party to remove from, City facilities personnel of such Obligated Party who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities.

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

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

6. Sunshine Ordinance. The Obligated Party acknowledges that this Agreement and all records related to its formation, the Obligated Party's performance of services pursuant to this Agreement, and the City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

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

8. Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Obligated Party is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. The Obligated Party is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of

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

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

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

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

In the performance of its services, the Obligated Party may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to the Obligated Party, or the Obligated Party collects such information on City's behalf, such information must be held by such Obligated Party in confidence and used only in performing the Agreement. The Obligated Party shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Obligated Party agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. The Obligated Party is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

The requirements of Article 142 shall only apply to the Obligated Party's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the

application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

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

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

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

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

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

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

**EXHIBIT D**  
**[RESERVED]**

**EXHIBIT E**  
**[RESERVED]**



## **EXHIBIT F**

### **FISCAL AGENT WIRING INSTRUCTIONS**

Bank Name:

Bank City and State:

ABA Number:

Account Name:

Account Number:

For Further Credit Account Name:

Reference: