

File No. 210083

Committee Item No. 5

Board Item No. 17

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date February 17, 2021

Board of Supervisors Meeting

Date February 23, 2021

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

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

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|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Funding Loan Agreement</u>                                |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Construction and Permanent Loan Agreement</u>             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Appendix to Construction and Permanent Loan Agreement</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Regulatory Agreement</u>                                  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Public Disclosures</u>                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CDLAC Resolution No. 20-146</u>                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Notice of Public Hearing</u>                              |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TEFRA Hearing Minutes - January 12, 2021</u>              |
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Completed by: Linda Wong Date February 12, 2021

Completed by: Linda Wong Date February 18, 2021

1 [Multifamily Housing Revenue Note - 1223 Webster Street - Fillmore Marketplace Partners,  
2 L.P. - Not to Exceed \$21,762,000]

3 **Resolution authorizing the execution and delivery of a multifamily housing revenue**  
4 **note in one or more series in an aggregate principal amount not to exceed \$21,762,000**  
5 **for the purpose of providing financing for the acquisition and rehabilitation of a 120-**  
6 **unit multifamily rental housing project located at 1223 Webster Street, known as**  
7 **“Fillmore Marketplace Apartments;” approving the form of and authorizing the**  
8 **execution of a funding loan agreement, providing the terms and conditions of the loan**  
9 **from the funding lender to the City, and the execution and delivery of the note;**  
10 **approving the form of and authorizing the execution of a borrower loan agreement**  
11 **providing the terms and conditions of the loan from the City to the borrower; approving**  
12 **the form of and authorizing the execution of a regulatory agreement and declaration of**  
13 **restrictive covenants; authorizing the collection of certain fees; approving**  
14 **modifications, changes and additions to the documents; ratifying and approving any**  
15 **action heretofore taken in connection with the back-to-back loans, the note and the**  
16 **project; granting general authority to City officials to take actions necessary to**  
17 **implement this Resolution, as defined herein; and related matters, as defined herein.**

18  
19 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
20 “Board”) desires to provide for the financing of a portion of the costs of the acquisition and  
21 rehabilitation by Fillmore Marketplace Housing Partners, L.P., a California limited partnership  
22 (the “Borrower”), of a 120-unit residential rental development project located at 1223 Webster  
23 Street, San Francisco, California, known as “Fillmore Marketplace Apartments” (the “Project”),  
24 to provide housing for persons and families of low income through the issuance of a  
25 multifamily housing revenue note in one or more series (collectively, the “Note”); and

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

7           WHEREAS, On September 16, 2020, the California Debt Limit Allocation Committee  
8 (“CDLAC”) in its Resolution Number 20-146, allocated an amount not to exceed \$21,762,000  
9 in qualified private activity bonds to the Project; and

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

13           WHEREAS, The City now wishes to approve the issuance of the Note in order to  
14 satisfy the public approval requirements of Section 147(f) of the Code; and

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

16           WHEREAS, On December 28, 2020, the City caused a notice stating that a public  
17 hearing with respect to the issuance of the Note would be held by the Mayor’s Office of  
18 Housing and Community Development on January 12, 2021, published in the Notices section  
19 of the Mayor’s Office of Housing and Community Development website (at  
20 <https://sfmohcd.org/notices-0>); and

21           WHEREAS, The Mayor’s Office of Housing and Community Development held the  
22 public hearing described above on January 12, 2021, and an opportunity was provided for  
23 persons to comment on the issuance of the Note and the Project; and

24       ///

25       ///

1           WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
2 the applicable elected representative authorized to approve the issuance of the Note within  
3 the meaning of Section 147(f) of the Code; and

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

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

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

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

18           WHEREAS, The City has engaged Squire Patton Boggs (US) LLP and Amira Jackmon,  
19 Attorney at Law, as co-special counsel with respect to the Note (“Co-Special Counsel”); and

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

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

25    ///

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

3           Section 2.    Approval of Execution and Delivery of Note. The Board of Supervisors  
4 adopts this Resolution for purposes of establishing compliance with the requirements of  
5 Section 1.150-2 of the United States Treasury Regulations. In accordance with the Act and  
6 the Funding Loan Agreement, the City is hereby authorized to execute and deliver a Note or  
7 notes in one or more series designated as “City and County of San Francisco Multifamily  
8 Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021” with such additional  
9 or other designation as may be necessary or appropriate to distinguish such series from every  
10 other series of bonds or notes, in an aggregate principal amount not to exceed \$21,762,000  
11 (the “Note”). The Note shall bear interest at an interest rate not to exceed twelve percent  
12 (12%) and shall have a final maturity date no later than forty (40) years from the date of  
13 execution and delivery of the Note. The Note shall be in the form set forth in and otherwise in  
14 accordance with the Funding Loan Agreement and shall be executed by the manual or  
15 facsimile signature of the Mayor of the City (the “Mayor”).

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

1 substantially said form, together with such additions thereto and changes therein as the City  
2 Attorney and Co-Special Counsel may approve or recommend in accordance with Section 7  
3 hereof.

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

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

20 Section 6. Issuer Fees. The City, acting through MOHCD, shall charge a fee for the  
21 administrative costs associated with executing and delivering the Note in an amount not to  
22 exceed 0.25% of the aggregate principal amount of the Note. Such fee shall be payable at  
23 funding loan closing and may be contingent on the funding loan closing. The City shall also  
24 charge an annual fee for monitoring the restricted units in the Project in an amount not to  
25 exceed 0.125% of the outstanding aggregate principal amount of the Note, but no less than

1 \$2,500 annually, from completion of construction through the term of the Regulatory  
2 Agreement. The annual monitoring fee due during the construction period shall be payable at  
3 funding loan closing. The Board hereby authorizes MOHCD to charge and collect the fees  
4 described in this section.

5 Section 7. Modifications, Changes, Additions. Any Authorized City Representative  
6 executing the City Documents, in consultation with the City Attorney and Co-Special Counsel,  
7 is hereby authorized to approve and make such modifications, changes or additions to the  
8 City Documents as may be necessary or advisable, provided that such modification does not  
9 authorize an aggregate principal amount of the Note in excess of \$21,762,000, provide for a  
10 final maturity of the Note later than forty (40) years, or provide for the Note to bear interest at  
11 a rate in excess of twelve percent (12%) per annum. The approval of any modification,  
12 addition or change to any of the aforementioned documents shall be evidenced conclusively  
13 by the execution and delivery of the document in question.

14 Section 8. Ratification. All actions heretofore taken by the officers and agents of the  
15 City with respect to the funding loan and the execution and delivery of the Note consistent  
16 with the City Documents are hereby approved, confirmed and ratified.

17 Section 9. General Authority. The proper officers of the City are hereby authorized  
18 and directed, for and in the name and on behalf of the City, to do any and all things and take  
19 any and all actions and execute and deliver any and all certificates, agreements (including  
20 such agreements to provide adequate or additional security or indemnities as required by  
21 lenders to consummate the financing) and other documents, including but not limited to those  
22 documents described in the City Documents, which they, or any of them, may deem  
23 necessary or advisable in order to consummate the lawful execution and delivery of the Note  
24 and to effectuate the purposes thereof and of the City Documents. Any such actions are  
25 solely intended to further the purposes of this Resolution, and are subject in all respects to the

1 terms of the Resolution. No such actions shall increase the risk to the City or require the City  
2 to spend any resources not otherwise granted herein. Final versions of such documents shall  
3 be provided to the Clerk of the Board for inclusion in the official file within 30 days of execution  
4 by all parties.

5 Section 10. File. All documents referenced herein as being on file with the Clerk of  
6 the Board are located in File No. 210083, which is hereby declared to be a part of this  
7 Resolution as if set forth fully herein.

8 Section 11. This Resolution shall take effect from and after its adoption by the Board  
9 and approval by the Mayor.

10

11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13

14 By: /s/ HEIDI J. GEWERTZ  
15 Heidi J. Gewertz  
16 Deputy City Attorney

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**FUNDING LOAN AGREEMENT**

**by and between**

**MUFG UNION BANK, N.A.**

**and**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**dated as of March 1, 2021**

**relating to:**

**\$ \_\_\_\_\_  
City and County of San Francisco  
Multifamily Housing Revenue Note  
(Fillmore Marketplace Apartments), Series 2021A -1**

**\$ \_\_\_\_\_  
City and County of San Francisco  
Multifamily Housing Revenue Note  
(Fillmore Marketplace Apartments), Series 2021A-2**

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EXHIBIT C FORM OF WRITTEN REQUISITION

EXHIBIT D CITY CONTRACTING PROVISIONS

## FUNDING LOAN AGREEMENT

(Back to Back Loan Program)

THIS FUNDING LOAN AGREEMENT, dated as of March 1, 2021 (the “**Funding Loan Agreement**”), is by and among MUFG UNION BANK, N.A., in its capacity as the funding lender hereunder (together with any successor to its rights, duties and obligations hereunder, the “**Bank**”), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties and obligations hereunder, the “**Governmental Lender**”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association, in its capacity as the fiscal agent hereunder (together with any successor to its rights, duties and obligations hereunder, the “**Fiscal Agent**”).

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following words and terms as used in this Funding Loan Agreement shall have the following meanings unless the context or use otherwise requires:

“**A-1 Borrower Note**” means the Promissory Note A-1 (Multifamily Housing Back to Back Loan Program), dated the Closing Date, evidencing a portion of the Borrower Loan in the maximum principal amount of \$\_\_\_\_\_, executed by the Borrower in favor of the Governmental Lender and endorsed by the Governmental Lender to the Bank as provided herein.

“**A-1 Funding Loan Note**” means the promissory note evidencing a portion of the Funding Loan in the maximum principal amount of \$\_\_\_\_\_, designated the “Multifamily Housing Revenue Note Series 2021A-1,” dated the Closing Date and executed by the Governmental Lender in favor of the Bank in the form attached hereto as Exhibit A-1.

“**A-2 Borrower Note**” means the Promissory Note A-2 (Multifamily Housing Back to Back Loan Program), dated the Closing Date, evidencing a portion of the Borrower Loan in the maximum principal amount of \$\_\_\_\_\_, executed by the Borrower in favor of the Governmental Lender and endorsed by the Governmental Lender to the Bank as provided herein.

“**A-2 Funding Loan Note**” means the promissory note evidencing a portion of the Funding Loan in the maximum principal amount of \$\_\_\_\_\_, designated the “Multifamily Housing Revenue Series 2021A-2,” dated the Closing Date and executed by the Governmental Lender in favor of the Bank in the form attached hereto as Exhibit A-2.

“**Act**” means The Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and, as applicable, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented to apply to obligations incurred as of the Closing Date.

“**Affiliate**” means, 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 Institutional Buyer**” means (a) a “**qualified institutional buyer**” as defined in Rule 144A promulgated under the United States Securities Act of 1933, as in effect on the date hereof (the “**Securities Act**”); (b) an “**accredited investor**” as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (c) an entity that is directly or indirectly wholly owned or controlled by the Bank (being a financial institution described in (a) above); (d) an entity all of the investors in which are described in (a), (b) or (c) above; or (e) a custodian or trustee for a party described in (a), (b) or (c) above.

“**Assignment of Deed of Trust**” means that certain Assignment of Deed of Trust and Related Documents dated March 1, 2021, executed by Governmental Lender in favor of Bank.

“**Bank**” means MUFG Union Bank, N.A., and its successors and assigns in its capacity as the funding lender hereunder.

“**Borrower**” means Fillmore Marketplace Housing Partners, L.P., a California limited partnership, and its successors and assigns.

“**Borrower Loan**” means the mortgage loan originated by the Governmental Lender to the Borrower in the principal amount of \$\_\_\_\_\_ pursuant to the terms of the Borrower Loan Agreement.

“**Borrower Loan Agreement**” means that certain Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program), dated as of March 1, 2021, by and among the Borrower, the Governmental Lender and Bank, as amended and supplemented from time to time, pursuant to which the Borrower Loan is being made.

“**Borrower Loan Documents**” shall have the meaning ascribed in it in the Borrower Loan Agreement.

“**Borrower Notes**” means, collectively, the A-1 Borrower Note and A-2 Borrower Note.

“**Borrower Representative**” means the president of the administrative general partner of the Borrower or , or any other officer of the administrative general partner of the Borrower designated by the president of the administrative general partner of the Borrower to be a Borrower Representative for purposes of the Borrower Loan Documents.

“**Business Day**” means a day other than a Saturday or Sunday on which the Bank is open for business for the funding of corporate loans.

“**CDLAC**” means the California Debt Limit Allocation Committee or any successor thereto.

“**Closing Date**” means March \_\_, 2021, being the date of execution and delivery of the Funding Loan Notes for purposes of the Code.

“**Code**” means the Internal Revenue Code of 1986 as in effect on the date of execution and delivery of the Funding Loan Notes and (except as otherwise referenced herein) as it may be amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“**Control**” means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) 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**” has the meaning given to such term in the Borrower Loan Agreement.

“**Deed of Trust**” means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing Construction Trust Deed (Multifamily Housing Back to Back Loan Program), executed by the Borrower and granting a security interest in the Development to the deed of trust trustee identified therein for the benefit of the Governmental Lender and Bank to secure the Borrower’s obligations under the Borrower Notes to repay the Borrower Loan, and all obligations related thereto under the Borrower Loan Agreement.

“**Development**” means the residential rental facility consisting of 120 units of multifamily rental housing (two of which shall serve as manager’s units) located at 1223 Webster Street, San Francisco, California, on the site described in the Deed of Trust and Exhibit A to the Regulatory Agreement.

“**Event of Default**” means any of the events described as an event of default in Section 9.1 hereof.

“**Fiscal Agent**” means MUFUG Union Bank, N.A., and its successors and assigns in its capacity as the fiscal agent hereunder.

“**Fiscal Agent’s Fees**” means the ongoing annual compensation and expenses of the Fiscal Agent payable semi-annually in arrears on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in an amount equal to \$\_\_\_\_\_ per annum.

“**Funding Loan**” means the loan originated hereunder by the Bank to the Governmental Lender in an aggregate principal amount of up to \$\_\_\_\_\_, evidenced by the Funding Loan Notes, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of the Borrower Loan Agreement.

“**Funding Loan Agreement**” means this Funding Loan Agreement, as amended and supplemented from time to time.

“**Funding Loan Documents**” means this Funding Loan Agreement, the Funding Loan Notes, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Assignment of Deed of Trust.

“**Funding Loan Notes**” means, collectively, the A-1 Funding Loan Note and the A-2 Funding Loan Note.

“**Governmental Lender**” means the City and County of San Francisco and its successors and assigns.

“**Maturity Date**” means, with respect to the A-1 Funding Loan Note, \_\_\_\_\_, 20\_\_ and, with respect to the A-2 Funding Loan Note, \_\_\_\_\_, 20\_\_.

“**Ongoing Governmental Lender Fee**” means an annual administrative fee payable to the Governmental Lender in an amount not to exceed one eighth of one percent (0.125%) of the principal amount of the Funding Loan Notes then outstanding, but no less than \$2,500.

“**Person**” means an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, a limited partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

“**Regulations**” means the tax regulations promulgated by the United States Department of the Treasury from time to time pursuant to the Code.

“**Regulatory Agreement**” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of March 1, 2021, by and between the Governmental Lender and the Borrower, as amended and supplemented from time to time in accordance with its terms,

“**Reserved Rights**” means the Governmental Lender’s rights to enforce and receive payments of money directly and for its own purposes under Exhibit “C” to, and Sections [7.24, 7.27, 7.29 and 11.4] (solely as such Sections relate to the Governmental Lender) of the Borrower Loan Agreement, the Governmental Lender’s rights to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to enforce the Borrower’s covenants to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Governmental Lender), its right to receive notices and to grant or withhold consents or waivers under the Regulatory Agreement and this Funding Loan Agreement, its rights to indemnification by the Borrower under Section 7.24 of the Loan Agreement and Section 7 of the Regulatory Agreement, and its rights to amend this Funding Loan Agreement and the Regulatory Agreement in accordance with the provisions hereof and thereof.

“**Requisition**” shall have the meaning ascribed to it in Section 9.6(c).

“**Security**” shall have the meaning ascribed to it in Section 7.1.

“**State**” means the State of California.

“**Tax Certificate**” means the Tax Certificate and Agreement among the Borrower, the Governmental Lender and the Fiscal Agent dated the Closing Date.



“**Tax Counsel**” means (a) Squire Patton Boggs (US) LLP and Amira Jackmon, Attorney at Law, or (b) any attorney at law or other firm of attorneys selected by the Borrower and acceptable to the Governmental Lender and Bank of nationally recognized standing in matters pertaining to the federal tax status of interest on tax exempt obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

1.2 Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Funding Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

1.3 Recitals, Titles and Headings. The terms and phrases used in the recitals of this Funding Loan Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all such terms and phrases for purposes of this Funding Loan Agreement shall be determined by references to Section 1.1 hereof. The titles and headings of the articles and sections of this Funding Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Funding Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of the Governmental Lender. The Governmental Lender makes the following representations and warranties:

(a) The Governmental Lender is a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State.

(b) Under the provisions of the Act, the Governmental Lender has the power, and has taken all official actions necessary (i) to enter into the Funding Loan Documents to which it is a party, or (ii) to perform its obligations hereunder and thereunder, and (iii) to consummate all other transactions on its part contemplated by this Funding Loan Agreement.

(c) The Funding Loan Documents to which the Governmental Lender is a party have been duly executed and delivered by the Governmental Lender and the Governmental Lender has taken such actions as are necessary to cause the Funding Loan Documents to which it is a party, when executed by the other respective parties thereto, to be valid and binding limited obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally.

(d) The execution and delivery of Funding Loan Documents to which it is a party, the performance by the Governmental Lender of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby, will not violate any law, rule, regulation or ordinance or any order, judgment or decree of any federal, state or local court, and do not conflict with, or constitute a breach of, or a default under the terms and conditions of any agreement, instrument or commitment to which the Governmental Lender is a party or by which the Governmental Lender or any of its property is bound.

(e) The Governmental Lender has not been served with any action, suit, proceeding, inquiry or investigation or, to the knowledge of the Governmental Lender, no action, suit, proceeding, inquiry or investigation is threatened against the Governmental Lender by or before any court, governmental agency or public board or body which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the governing board of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party, or the loaning of the Funding Loan as herein set forth; (iii) affects or questions the validity or enforceability of the Funding Loan Documents; or (iv) questions the power or authority of the Governmental Lender to carry out the transactions on its part contemplated by the Funding Loan Documents.

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

(g) The Governmental Lender will not knowingly create, authorize or approve any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

(h) CDLAC has provided an allocation of the State of California's 2020 private activity bond volume cap under section 146 of the Code to the Governmental Lender for the Funding Loan Notes, the Governmental Lender has timely made any required carry forward election with respect to such allocation as required by the Code, and the Governmental Lender will comply with the requirements of the Code with respect to such allocation. The Governmental Lender has applied 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 Funding Loan Notes; and, in connection therewith, has included the information on Form 8038 filed for the Funding Loan Notes that is required by section 3.03 of said Notice.

Nothing in this Funding Loan Agreement shall be construed as requiring the Governmental Lender to provide any financing for the Development other than the proceeds of the Funding Loan, or to provide sufficient moneys for all of the costs of the Development.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS

FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

2.2 Representations, Warranties and Covenants of the Bank. The Bank as of the date hereof, represents, warrants and covenants that:

(a) The Bank is a national banking association, organized and existing under the laws of the United States and has full legal right, power and authority under the laws of the United States (i) to enter into this Funding Loan Agreement, the Borrower Loan Agreement and the Assignment Agreement, (ii) to perform its obligations hereunder, and (iii) to consummate the transactions on its part contemplated by this Funding Loan Agreement and the Borrower Loan Agreement.

(b) This Funding Loan Agreement, the Borrower Loan Agreement and the Assignment Agreement have been duly executed and delivered by the Bank and, when executed by the Governmental Lender and Borrower, as applicable, will constitute valid and binding obligations of the Bank, enforceable against the Bank in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally.

(c) The execution and delivery of this Funding Loan Agreement, the Borrower Loan Agreement and the Assignment Agreement, the performance by the Bank of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby will not violate any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Bank is a party or by which the Bank or any of its property is bound.

(d) The Bank has not been served with and, to the knowledge of the Bank, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Bank which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Governmental Lender or the execution and delivery of this Funding Loan Agreement, the Borrower Loan Agreement or the Assignment Agreement, (ii) affects or questions the validity or enforceability of this Funding Loan Agreement or the Borrower Loan Agreement, or (iii) questions the power or authority of the Bank to carry out the transactions on its part contemplated by, or to perform its obligations under, this Funding Loan Agreement and the Borrower Loan Agreement.

(e) Any certificate for the benefit of Governmental Lender signed by a representative of the Bank and delivered pursuant to this Funding Loan Agreement, the other Funding Loan Documents or the Borrower Loan Agreement shall be deemed a representation and warranty by the Bank as to the statements made therein.

**ARTICLE III**  
**THE FUNDING LOAN**

3.1 Closing of the Funding Loan. The closing of the Funding Loan shall not occur until the following conditions are met:

(a) the Bank shall have received an original executed counterpart of this Funding Loan Agreement, the Funding Loan Notes, the Assignment of Deed of Trust, the Regulatory Agreement, the Deed of Trust, the original of the Borrower Notes endorsed by the Governmental Lender to the Bank, and all of the other Borrower Loan Documents;

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Funding Loan Agreement shall have occurred as evidenced by a certificate received from the Governmental Lender;

(c) the conditions to the closing of the Borrower Loan, the issuance of the Borrower Notes and the initial disbursement of the Borrower Loan as set forth in Sections 4.1, 4.2 (including, but not limited to, Sections 4.2.2, 4.2.3, 4.2.6(b), and 4.2.9), and 5.1.1 of the Borrower Loan Agreement, shall have been satisfied in full;

(d) counsel to the Borrower shall have delivered an opinion in form satisfactory to counsel to the Governmental Lender and counsel to the Bank regarding the enforceability against the Borrower of the Borrower Loan Documents to which the Borrower is a party;

(e) the initial owner of the Funding Loan Notes shall have executed and delivered a letter in the form of Exhibit B hereto; and

(f) all legal matters incident to the transactions contemplated by this Funding Loan Agreement shall be concluded to the reasonable satisfaction of Tax Counsel, counsel to the Governmental Lender, counsel to the Bank and counsel to the Fiscal Agent.

3.2 Commitment to Execute the Funding Loan Notes. The Governmental Lender agrees to execute and deliver the Funding Loan Notes simultaneously with the execution of this Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Notes, the Tax Certificate and the Regulatory Agreement.

3.3 Amount and Source of Funding Loan. The Bank hereby makes to the Governmental Lender and agrees to fund, and the Governmental Lender hereby accepts from the Bank, upon the terms and conditions set forth herein, the Funding Loan in an aggregate principal amount of up to \$\_\_\_\_\_, and agrees to have the proceeds of the Funding Loan applied and disbursed in accordance with the provisions of this Funding Loan Agreement.

3.4 Disbursement of Funding Loan Proceeds.

(a) The Bank and the Governmental Lender hereby authorize and direct the funding and disbursement by the Bank of the initial principal amount of the Funding Loan in the amount of \$\_\_\_\_\_ on the Closing Date, subject to the satisfaction of all the conditions specified in Section 3.1 above. On the date of execution and delivery of the Funding Loan Notes,

and the date of execution and delivery of the Borrower Notes, such initial proceeds of the Funding Loan shall be disbursed by the Bank, on behalf of the Governmental Lender, to the escrow agent for the closing of the Borrower Loan to fund the Borrower Loan under and as provided in Section 5.1.2 of the Borrower Loan Agreement.

(b) The Bank and the Governmental Lender hereby authorize and direct the funding and disbursement of the remaining principal amount of the Funding Loan (not referenced in Section 3.4(a) above) by the Bank, on behalf of the Governmental Lender, from draws on the A-2 Funding Loan Note and, after the A-2 Funding Loan Note is fully drawn, the A-1 Funding Loan Note directly to the Fiscal Agent to fund the remaining principal of the Borrower Loan under and as provided in, and subject to the provisions of, Section 5 of the Borrower Loan Agreement (other than Section 5.1.1).

(c) Prior to the Conversion Date, Bank shall disburse (or credit) directly to Bank on the first Business Day of each month, the accrued interest under the Funding Loan and Bank will provide Fiscal Agent with written notice of the amount disbursed (or credited) pursuant to this Section 3.4(c).

(d) None of the Bank, the Governmental Lender, or the Fiscal Agent shall be responsible for the application by the Borrower of monies disbursed to the Borrower in accordance with this Section 3.4.

(e) From and after the earlier of (i) the Conversion Date (as defined in the Borrower Loan Agreement), or (ii) the date which is three years after the Closing Date, no further advances of the Funding Loan shall occur.

#### **ARTICLE IV** **LIMITED LIABILITY; NOTE REGISTER**

4.1 Limited Liability. All obligations and any liability of the Governmental Lender hereunder, under the Funding Loan Notes, under the other Funding Loan Documents and under the Borrower Loan Documents shall be limited, special obligations of the Governmental Lender, payable solely and only from amounts received from the Borrower under the Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents, as further described in Article V hereof. None of the Governmental Lender, the State, or any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Funding Loan or to satisfy any other monetary obligations of the Governmental Lender under the Funding Loan Documents, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment. The repayment of the Funding Loan is not secured by a pledge of the faith and credit of the Governmental Lender, the State or any of its political subdivisions nor does the Funding Loan constitute indebtedness within the meaning of any constitutional or statutory debt limitation.

4.2 Note Register. The Funding Loan Notes shall be in fully registered form. The Bank shall maintain records (the “**Note Register**”) as to the owner of the Funding Loan Notes. Any transfer by the Bank of its ownership of the Funding Loan Notes (or by any subsequent transferee of the Funding Loan Notes) shall be recorded by the Bank in the Note Register.

#### 4.3 Transfer of Funding Loan Notes.

(a) The Funding Loan Notes and the Funding Loan may, in accordance with the terms of this Funding Loan Agreement but in any event subject to the provisions of Section 4.3(b) and (c) hereof, be transferred by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of the Funding Loan Notes for cancellation at the office of the Governmental Lender, accompanied by a written instrument of transfer in a form acceptable to the Governmental Lender, duly executed. Whenever the Funding Loan Notes shall be surrendered for transfer, the Governmental Lender shall execute and deliver to the transferee thereof new Funding Loan Notes in the name of the transferee as beneficiary thereof.

(b) Notwithstanding any other provision hereof, the Funding Loan Notes may not be registered in the name of, or transferred to, any person except an Approved Institutional Buyer that executes and delivers to the Governmental Lender and Bank a letter substantially in the form attached hereto as Exhibit B; provided, however, that no such letter is required to be executed in connection with a transfer of the Funding Loan Notes to an Affiliate of the Bank.

Nothing contained in this Section 4.3(b) shall be deemed to limit or otherwise restrict the sale by any owner of the Funding Loan Notes of any participation interests in the Funding Loan Notes in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that (i) such owner shall remain the owner of record in the Note Register of the Funding Loan Notes following the sale of any such participation interest; (ii) the purchaser of the participation interest is an Approved Institutional Buyer; and (iii) the purchaser of such participation interest shall provide a holder letter to the Governmental Lender and the Bank substantially in the form of Exhibit B hereto.

(c) The Funding Loan Notes may only be transferred together, in whole, to a single transferee.

(d) The Governmental Lender may require the payment by the entity requesting any such transfer of any tax, fee or other governmental charge required to be paid with respect to such transfer. The cost of printing any new Funding Loan Note and any services rendered or any out-of-pocket expenses incurred by the Governmental Lender in connection therewith shall be paid by the transferor of the Funding Loan Notes.

(e) The Bank shall indemnify and defend the Governmental Lender against any claim brought by any transferor or transferee of the Funding Loan Notes in respect of the Borrower Loan Documents in the event that the Bank permits a transfer of the Funding Loan Notes in violation of the restrictions in Sections 4.3(b) and (c) above.

### **ARTICLE V** **REPAYMENT OF THE FUNDING LOAN**

#### 5.1 Funding Loan Repayment.

(a) The Funding Loan shall be evidenced by the Funding Loan Notes. The A-1 Funding Loan Note shall be executed by the Governmental Lender in the form attached hereto as Exhibit A-1, and the A-2 Funding Loan Note shall be executed by the Governmental Lender in

the form attached hereto as Exhibit A-2. The Governmental Lender agrees to pay to the Bank, but only from amounts received by the Governmental Lender (or the Bank, in its capacity as agent for the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents, principal of and interest on the Funding Loan at the times, in the manner, in the amounts and at the rates of interest provided in the Funding Loan Notes and this Funding Loan Agreement.

(b) Each Funding Loan Note is intended to evidence a pass-through payment obligation, and shall provide for payment terms identical to a corresponding Borrower Note. The A-1 Funding Loan Note shall correspond in payment terms identical to the A-1 Borrower Note, and the A-2 Funding Loan Note shall correspond in payment terms identical to the A-2 Borrower Note.

(c) The Governmental Lender further agrees to cause the Borrower to pay, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank and appointment of the Bank as agent for the Governmental Lender under this Funding Loan Agreement, all late charges and prepayment penalties as set forth in the Funding Loan Notes, all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Development, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments; provided, however, that the Governmental Lender reserves the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Development and the Governmental Lender's obligations hereunder will be limited as provided in Sections 4.1, 5.2 and 6.14 hereof.

(d) The Governmental Lender further agrees, subject to Sections 4.2, 5.2 and 6.13 hereof, to cause the Borrower to pay to the Bank, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank and appointment of the Bank as agent for the Governmental Lender under this Funding Loan Agreement, on the Closing Date a loan fee equal to \$\_\_\_\_\_.

5.2 Nature of the Governmental Lender's Obligations. The Governmental Lender shall repay each Funding Loan Note, but only from amounts received by the Governmental Lender or the Bank (in its capacity as assignee of the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the corresponding Borrower Note and the other Borrower Loan Documents, pursuant to the terms of such Funding Loan Note irrespective of any rights of set-off, recoupment or counterclaim the Governmental Lender might otherwise have against the Bank or any other person. The Governmental Lender will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Funding Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the acquisition, rehabilitation or operation of the Development; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Funding Loan or the Development; (iii) any event constituting force majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the Governmental Lender or the Bank to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or

obligation arising out of or connected with the Funding Loan Notes; it being the intention of the parties that, as long as any of the Funding Loan Notes or any portion thereof remains outstanding and unpaid, the Governmental Lender shall be obliged to repay the Funding Loan, but only from amounts received by the Governmental Lender or the Bank (in its capacity as assignee of the Governmental Lender under this Funding Loan Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents. This Section 5.2 shall not be construed to release the Governmental Lender from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Governmental Lender from asserting any rights which it may have against the Bank under the Funding Loan Notes or under any provision of law or to prevent or restrict the Governmental Lender, from prosecuting or defending any action or proceeding by or against the Bank or the Borrower or taking any other action to protect or secure its rights, or to prevent or restrict the Bank from asserting any rights which it may have against the Borrower.

Notwithstanding the foregoing, neither the members of the governing body of the Governmental Lender nor the officers or agents of the Governmental Lender shall be personally liable for the amounts owing under this Funding Loan Agreement, either Funding Loan Note or any of the other Funding Loan Documents; and the Bank's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth in Section 7.3 hereof and, if a default also exists under the Borrower Loan Agreement or any Borrower Note, to commence foreclosure under Deed of Trust and the other Borrower Loan Documents and the exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under either Funding Loan Note, the Bank shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender or Bank may have against the Borrower.

## **ARTICLE VI**

### **FURTHER AGREEMENTS**

6.1 Successor to the Governmental Lender. The Governmental Lender will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law or assure the assumptions of its obligations hereunder by any public trust or political subdivision succeeding to its powers.

6.2 Additional Instruments. The Governmental Lender hereby covenants to execute and deliver, or cause to be executed and delivered, at the expense of the Borrower, such additional instruments and to perform such additional acts, or cause the performance of such additional acts, as may be necessary, in the written opinion of the Bank, acting in good faith, to carry out the intent of this Funding Loan Agreement and the Funding Loan Notes or to perfect or give further assurances of any of the rights granted, or provided for in this Funding Loan Agreement, the Assignment of Deed of Trust or the other Funding Loan Documents.

6.3 Books and Records. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank, and subject to the provisions of Sections 4.1, 5.2 and 6.13 hereof, cause the Borrower to permit the Bank or its duly authorized representatives access during normal business hours to the books and records of the



Borrower pertaining to the Borrower Loan and the Development, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, the Bank and their duly authorized representatives, and at the sole expense of the Borrower.

6.4 Notice of Certain Events. The Governmental Lender hereby covenants to advise the Bank promptly in writing of the occurrence of any Event of Default under and as defined in the Borrower Loan Agreement, Regulatory Agreement or the other Funding Loan Documents of which it has received written notice, or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default thereunder of which it has received written notice, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In Section [7.23] of the Borrower Loan Agreement, the Borrower has agreed to advise the Governmental Lender and the Bank promptly in writing of the occurrence of any Event of Default (as defined in the Borrower Loan Agreement).

6.5 Compliance with Usury Laws. Notwithstanding any other provision of this Funding Loan Agreement, it is agreed and understood that in no event shall this Funding Loan Agreement, with respect to the Funding Loan Notes, be construed as requiring the Governmental Lender or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Funding Loan Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of the principal amount of the Funding Loan Notes, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Funding Loan Agreement or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount.

The provisions of this Section prevail over any other provision of this Funding Loan Agreement.

6.6 No Untrue Statements. Neither this Funding Loan Agreement nor any other document, certificate or written statement furnished to the Bank by the Governmental Lender, contains to the best of its knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by the Governmental Lender that all such statements, representations and warranties shall be deemed to have been relied upon by the Bank as an inducement to make the Funding Loan and that if any such statements, representations and warranties were materially incorrect at the time they were made, the Bank may consider any such misrepresentation or breach an Event of Default.

No document, certificate or written statement furnished to the Governmental Lender by the Bank contains to the best of its knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading or incomplete as of the date hereof.

6.7 No Arbitrage. 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, the Governmental Lender shall not take nor permit nor suffer to be taken, any action with respect to the proceeds of the Funding Loan Notes which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Funding Loan Notes to be an “**arbitrage bond**” within the meaning of section 148 of the Code and the Regulations promulgated thereunder. The Governmental Lender covenants, 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, to cause the Borrower to rebate to the United States Treasury any amounts which are required to be rebated thereto pursuant to the Code and any regulations promulgated thereunder with respect to the Funding Loan and the Borrower shall cause payment of an amount equal to excess investment earnings with respect to the Funding Loan, to the United States in accordance with the Regulations, all at the sole expense of the Borrower.

6.8 Limitation on Issuance Costs. The Governmental Lender shall assure, 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, that, from the proceeds of the Funding Loan Notes received from the Bank and investment earnings thereon, an amount not in excess of two percent (2%) of the amount of the Funding Loan advanced by the Bank shall be used to pay for, or provide for the payment of costs associated with the issuance, execution and delivery of the Funding Loan Notes. For this purpose, if the fees of the Bank are retained as a discount on the purchase of the Funding Loan Notes, such retention shall be deemed to be an expenditure of proceeds of the Funding Loan for said fees.

6.9 Federal Guarantee Prohibition. The Governmental Lender shall take no action nor, 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, permit nor suffer any action to be taken if the result of the same would be to cause the Funding Loan Notes to be “**federally guaranteed**” within the meaning of Section 149(b) of the Code.

6.10 Prohibited Facilities. The Governmental Lender, 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, shall assure that no portion of the proceeds of the Funding Loan shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. The Governmental Lender, 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, shall assure that no portion of the proceeds of the Funding Loan shall be used for an office unless the office is located on the premises of the facilities constituting the Development and unless not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Development.

6.11 Use Covenant. 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, the Governmental Lender shall not use or knowingly permit the use of any proceeds of Funding Loan or any other funds of the Governmental Lender, directly or indirectly, in any

manner, and shall not take or permit to be taken any other action or actions, which would result in the Funding Loan Notes not meeting the requirements of Section 142(d) of the Code as applicable to the Development.

6.12 Limitation of Expenditure of Proceeds. The Governmental Lender shall assure, 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, that not less than 97 percent of the amount advanced on the Funding Loan, plus premium (if any) paid on the purchase of the Funding Loan Notes by the original purchaser thereof from the Governmental Lender, less any original discount, are used for Qualified Project Costs (as defined in the Regulatory Agreement) and that less than 25 percent of such amount is used for land or an interest in land.

6.13 Tax-Exempt Status of Funding Loan. The Governmental Lender covenants to and for the benefit of the Bank that, notwithstanding any other provisions of this Funding Loan Agreement or any other instrument, it will:

(a) 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 Funding Loan Notes to be includable in gross income for federal income tax purposes;

(b) whenever and so often as requested by Bank, the Governmental Lender (at the sole cost and expense of the Borrower) shall do and perform all acts and things permitted by law and necessarily desirable in order to assure the interest paid by the Governmental Lender on the Funding Loan Notes will be excluded from the gross income of the owner of the Funding Loan Notes for federal income tax purposes pursuant to Section 103 of the Code, except in the event where any owner of the Funding Loan Notes 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) not knowingly take any action nor, solely in reliance of the covenants and representations of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement and the Tax Certificate, knowingly permit or suffer any action to be taken if the result of the same would be to cause the Funding Loan Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code of the Regulations.

For purposes of this Section 6.12 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 Bank 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 an opinion of Tax Counsel.

6.14 Immunities and Limitations of Responsibility of Governmental Lender.

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

be genuine. The Governmental Lender shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person, except its own officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The Governmental Lender shall not be required to take any remedial action (other than the giving of notice) hereunder or under any of the other Funding Loan Documents unless indemnity in a form acceptable to the Governmental Lender is furnished by the party requesting such action 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 VI shall not be considered a default hereunder by the Governmental Lender.

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section [7.24] of the Borrower Loan Agreement and Section 7 of the Regulatory Agreement. Such indemnities shall survive payment of the Funding Loan and discharge of this Funding Loan Agreement.

## **ARTICLE VII** **SECURITY**

7.1 Security for the Funding Loan. To secure the payment of the Funding Loan and the Funding Loan Notes, the Governmental Lender hereby grants, bargains, sells, conveys, assigns, transfers, hypothecates, pledges and sets over to the Bank (excepting only the Reserved Rights) a lien on and security interest in the following described property (collectively, the “**Security**”):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Notes, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Development and, including, without limitation, all income, revenues, proceeds and other amounts to which Governmental Lender is entitled to derive from or in connection with the Development and the Borrower Loan Documents, including all amounts due under the Borrower Loan Agreement, the Borrower Notes or the other Borrower Loan Documents and all amounts obtained after the exercise of the remedies provided in the Borrower Loan Documents and all receipts credited under the provisions of the Borrower Loan Agreement against said amounts payable;

(b) All, title and interest of the Governmental Lender in, to and under the other Borrower Loan Documents, together with all rights, remedies, privileges and options pertaining to, the Borrower 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 Borrower Loan Documents;

(c) All right, title and interest of the Governmental Lender in and to (i) the right to collect and receive net proceeds of any policy of insurance maintained pursuant to the Borrower Loan Documents; (ii) any award or payment becoming payable to Governmental Lender under the Borrower Loan Documents by reason of any condemnation of the Development, any improvements located thereon or any conveyance in lieu of condemnation; and (iii) any bankruptcy, insolvency, reorganization or condemnation proceeding involving the Borrower or any Loan Party (as defined in the Borrower Loan Agreement) with respect to the Borrower Loan Documents;

(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 subject to the lien of this Funding Loan Agreement as additional security by Governmental Lender or anyone on its part or with its consent or which pursuant to any of the provisions hereof or the Borrower Loan Documents may come into the possession or control of the Funding Lender; and

(e) 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 under this Funding Loan Agreement, 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.

The pledge and assignment of the security interest granted in the Security pursuant to this Section 7.1 for the payment of principal of, premium, if any, and interest on the Funding Loan Notes, in accordance with its terms and provisions and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Funding Loan Notes by the Governmental Lender. The Security so pledged and/or thereafter received by Governmental Lender or the Bank 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 whether in tort, contract or otherwise against Governmental Lender irrespective of whether such parties have notice thereof.

7.2 Delivery of Security. In connection with such pledge, assignment, transfer and conveyance of the Security pursuant to Section 7.1, Governmental Lender shall deliver to Bank the following documents or instruments promptly following the execution and, to the extent applicable, their recordation or filing:

(a) The Borrower Notes endorsed without recourse to the Bank by the Governmental Lender;

(b) The Borrower Loan Agreement, Regulatory Agreement, Deed of Trust and the other Borrower Loan Documents existing on the Closing Date and the Assignment of Deed of Trust assigning for security purposes and without recourse the Deed of Trust and Borrower Loan Documents from the Governmental Lender to the Bank;

(c) Uniform Commercial Code financing statements or other chattel security documents giving notice of Bank's status as an assignee of the Governmental Lender's security interest in any personal property forming a part of the Development; and

(d) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement, in forms provided by the Bank.

The Governmental Lender shall deliver and deposit with the Bank such additional documents, financing statements and instruments as the Bank may reasonably request in writing from time to time for the purpose of better perfecting and assuring to the Bank its lien and security interest in and to the Security in each case in forms provided by the Bank and at the expense of the Borrower.

## **ARTICLE VIII** **AGENCY**

8.1 Appointment of Bank as Agent. The Governmental Lender hereby irrevocably appoints the Bank as its agent with full authority and power to act on its behalf for the purposes set forth herein and to do all other acts necessary or incidental to the performance and execution thereof, except for the Reserved Rights.

8.2 Authority of the Bank. The Bank is authorized and agrees to advance monies on behalf of the Governmental Lender to fund the Borrower Loan upon satisfaction of the conditions set forth in the Borrower Loan Agreement and otherwise to act on behalf of the Governmental Lender under the Borrower Loan Documents, except for the Reserved Rights. Except for the Reserved Rights, the Bank is hereby authorized, directed and empowered to exercise all the rights, powers or remedies of the Governmental Lender under the Borrower Loan Agreement and the other Borrower Loan Documents, and to make all determinations and exercise all options and elections thereunder, without the necessity of further advice or consultation with, or consent or authorization by, the Governmental Lender, and all actions taken by the Bank under the Borrower Loan Agreement or any of the other Borrower Loan Documents shall be valid and shall have the same force and effect, as if taken by the Governmental Lender. The Bank shall have the right to exercise any rights, remedies, conferred on the Governmental Lender pursuant to the Borrower Loan Documents (except for the Reserved Rights) as may be necessary or convenient to (i) enforce the payment of any amounts owing by Borrower under the Borrower Loan Documents and prepayments thereof, or (ii) otherwise to protect the interest of the Governmental Lender or Bank upon a default by Borrower under the Borrower Loan Documents. The Bank agrees to provide the Governmental Lender any notices given by it or delivered to it pursuant to the Borrower Loan Agreement regarding the occurrence of an Event of Default (as defined in the Borrower Loan Agreement), the acceleration of the Borrower Loan or the foreclosure of the Deed of Trust and shall provide written notice to Governmental Lender of any amendment to the Borrower Notes or the Borrower Loan Agreement. The Bank shall have the right to collect all payments and other amounts received by the Governmental Lender from or on behalf of the Borrower pursuant to the Borrower Loan Agreement or the other Borrower Loan Documents," including prepayments thereof, except for payments of fees owing by the Borrower to the Governmental Lender in respect of the Reserved Rights.

8.3 Successor Agent. Anything herein to the contrary notwithstanding, any corporation or association into which the Bank may be converted or merged or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any conversion, sale, merger, consolidation or transfer to which it is a party will, ipso facto, be and become the Bank hereunder and vested with all of the title to the whole property and all the powers, discretion, immunities, privileges, obligations and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of the parties hereto.

8.4 Consent to Assignment. The Governmental Lender agrees that Bank shall have the right to assign all of its rights under this Funding Loan Agreement, and under all instruments and documents executed by the Governmental Lender pursuant to this Funding Loan Agreement, to an Affiliate of Bank, or to a subsequent owner of all of the Funding Loan Notes and the Funding Loan as permitted under Section 4.3 or an Affiliate thereof. The Bank will advise the Governmental Lender in writing of any such assignment and the Governmental Lender will execute and deliver to Bank any documents (at the expense of the Bank) necessary to effectuate such assignment in forms provided by the Bank, and will not take any action to impair Bank's right to assign such rights pursuant to this Section.

8.5 Power of Attorney. The Governmental Lender hereby irrevocably makes, constitutes and appoints the Bank (and any of the Bank's officers, employees or agents, as appropriate and as designated by the Bank) as the Governmental Lender's true and lawful attorney-in-fact with full power of substitution, subject to the Reserved Rights, to (a) sign in the name of the Governmental Lender any assignments, notices of default, notices of election to sell, assignments and substitutions of trustee or similar documents necessary or appropriate to enforce the remedies of the Governmental Lender under the Borrower Loan Agreement, the Borrower Notes, the Deed of Trust or any of the other Borrower Loan Documents, including complaints, motions and any other pleadings necessary to secure the appointment of a receiver under the Deed of Trust, (b) to appear in any bankruptcy, insolvency, reorganization, condemnation or other action or proceeding, and (c) to prepare applications for, negotiate and settle claims, and collect any distribution, award or other amount becoming payable through or as the result of (i) any such proceedings, (ii) any insured or uninsured casualty loss, or (iii) any condemnation, taking or conveyance in lieu of condemnation of any of the assets that are the subject of the Borrower Loan Agreement, the Borrower Notes, the Deed of Trust or the other Borrower Loan Documents. The power of attorney granted by the Governmental Lender to the Bank hereunder, being coupled with the Bank's interest in the Funding Loan, is irrevocable until all of the obligations of Governmental Lender under the Funding Loan Notes have been satisfied and discharged in full.

8.6 Acceptance. The Bank hereby accepts the assignments and pledge made herein for the purpose of securing the payments due pursuant to the Funding Loan Agreement.

8.7 Conditions. This Article VIII shall confer no obligations or impose no duties upon the Bank beyond those expressly provided in this Funding Loan Agreement and the Borrower Loan Agreement. This Article VIII shall confer no obligations or impose no duties upon the Governmental Lender beyond those expressly provided in this Funding Loan Agreement.

**ARTICLE IX**  
**FUNDS AND ACCOUNTS**

9.1 Authorization to Create Funds and Accounts. Except as provided in Section 9.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Bank and Fiscal Agent, 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 Bank or the Fiscal Agent, 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.

9.2 Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be deposited in a deposit account, savings account or money market account with Fiscal Agent at the direction of the Borrower, subject in all cases to the restrictions of Section 6.13 hereof and of the Tax Certificate.

9.3 Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Note Payment Fund;
- (b) The Project Fund;
- (c) The Expense Fund; and
- (d) 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 shall be held by the Fiscal Agent in trust for the benefit of the Bank, and, except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, be subject to the lien hereof.

9.4 **Note Payment Fund.**

(a) 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.

(b) 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, funds pledged to Bank hereunder 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.



(c) 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;

*Second*, to pay or provide for the payment or the prepayment of principal on the Funding Loan, 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 Date.

#### 9.5 Expense Fund.

(a) The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Regulatory Agreement to be paid by the Borrower to the Governmental Lender and the amounts required by this Agreement to be paid to 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 (i) the City's Ongoing Governmental Lender Fee pursuant to Section 17 of the Regulatory Agreement to the Governmental Lender as and when due, (ii) the Fiscal Agent amounts due pursuant to the definition of Fiscal Agent's Fees herein, (iii) 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 (ii) hereof, and (iv) 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 (i) hereof.

(b) In the event that the amounts on deposit in the Expense Fund are not equal to the amounts payable from the Expense Fund as provided in Section 9.5(a) on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

(c) 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 Bank) 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 to the Governmental Lender.

(d) 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 such the Ongoing Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

#### 9.6 Project Fund.

(a) All proceeds of the Funding Loan provided by the Bank shall be deposited to the Project Fund and disbursed as herein provided. The Fiscal Agent shall use moneys in the Project Fund for the acquisition, construction and equipping of the Development, to pay other permitted development costs and to pay other costs related to the Development as provided herein.

(b) Not less than 97% of the moneys deposited in and credited to the Project Fund, representing the proceeds of the Funding Loan, including any income earned thereon, will be expended for Qualified Project Costs (as defined in the Regulatory Agreement) (the “97% Requirement”). The amounts on deposit in the Project Fund shall not be applied to the payment of costs of issuance of the Funding Loan Notes.

(c) Before any payment representing Funding Loan Notes proceeds shall be made from the Project Fund, the Regulatory Agreement and the Deed of Trust shall have been executed and recorded in the official records of the City and County of San Francisco and there shall be filed with the Fiscal Agent a written requisition of the Borrower substantially in the form attached hereto as Exhibit C (“Requisition”) and approved by the Bank pursuant to the terms, conditions and provisions of the Borrower Loan Agreement, with a copy to the Governmental Lender. The Fiscal Agent shall be entitled to conclusively rely upon any Requisition in determining whether to disburse amounts from the Project Fund.

(d) In connection with a Requisition, except for a written request for amounts representing accrued interest due and payable on the Funding Loan Notes:

(1) Only the signature of the Bank shall be required on a Requisition during any period in which an Event of Default by the Borrower has occurred and is then continuing under the Borrower Loan Agreement (notice of which default has been given in writing by the Bank to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(2) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Requisition signed only by the Bank (and without any need for any signature by an Authorized Borrower Representative), so long as the amount to be disbursed is to be used solely to make payments of principal, interest and/or fees due under the Funding Loan Documents.

(3) The Fiscal Agent may conclusively rely on all Requisitions, the execution of the Requisitions by the Borrower and the approval of all Requisitions by the Bank, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Bank and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Development or the work of improvement or to make any independent investigation with respect to the matters set forth in any Requisition or other

statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, construction, equipping, improvement and installation of the Development.

(e) Upon receipt of each Requisition submitted by the Borrower and approved in writing by the Bank, the Fiscal Agent shall promptly, but in any case within one Business Day, make payment from the appropriate account within the Project Fund in accordance with such Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 97% Requirement. The approval in writing of a Requisition by the Bank shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Requisition constitute Qualified Project Costs or other permitted Development costs.

(f) The Fiscal Agent shall immediately provide written notice to the Borrower, the Bank and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the transfers as and when required by Section 9.6(e). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the Borrower and such person, firm or corporation, or (iii) upon receipt by the Bank and the Governmental Lender of evidence that the Borrower has previously paid such amount and written direction to the Fiscal Agent as to such as evidenced by the Bank's approval of the Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the written consent of the Bank, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Funding Loan. If a Requisition signed by the Borrower Representative and countersigned by the Bank is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

(g) Immediately prior to any mandatory prepayment of the Funding Loan pursuant hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Bank, be applied to the prepayment of the Funding Loan pursuant hereto.

(h) Investment income earned on amounts on deposit in the Project Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Project Fund.

(i) Prior to the Conversion Date, the Bank shall disburse the Funding Loan directly to the Bank to pay accrued interest due and payable on the Funding Loan Notes and will

provide written notice of the amount of such disbursement to the Fiscal Agent within three (3) Business Days of the disbursement.

9.7 Rebate Fund. The Fiscal Agent shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(a) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(b) All payments to the United States of America pursuant to this Section shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst).

(c) The Fiscal Agent shall preserve all statements, forms and explanations received from the Borrower and delivered to the Fiscal Agent and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan Notes.

(d) The Fiscal Agent may conclusively rely on the instructions of the Borrower (based upon the report of the Rebate Analyst) with regard to any actions to be taken by it pursuant to this Section 9.7 and shall have no liability for any consequences of any failure of the Borrower or the Rebate Analyst to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided in Subsection (b) above, the Fiscal Agent shall have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instruction related thereto.

(e) If at any time during the term of this Funding Loan Agreement the Governmental Lender, the Fiscal Agent or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide to the other persons named herein, an opinion of Tax Counsel that such action shall be in compliance with the laws of the State and the terms of this Funding Loan Agreement and will not impair the exclusion of interest on the Funding Loan from gross income for purposes of federal income taxation.

(f) Moneys and securities held by the Fiscal Agent in the Rebate Fund shall not be deemed funds of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the owners to secure the Funding Loan Notes or any other obligations.

(g) Moneys in the Rebate Fund may be separately invested and reinvested by the Fiscal Agent, at the request of and as directed in writing by the Borrower, subject to the Code. The Fiscal Agent shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(h) Notwithstanding anything to the contrary in this Funding Loan Agreement, no payment shall be made by the Fiscal Agent to the United States if the Borrower shall furnish to the Governmental Lender and the Fiscal Agent, an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Funding Loan Notes. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide an opinion of Tax Counsel that such action will not impair the exclusion of interest on the Funding Loan from gross income for purposes of federal income taxation to the Governmental Lender and the Fiscal Agent with respect to such withdrawal.

(i) The Fiscal Agent shall keep and make available to the Governmental Lender and the Borrower records concerning the investments of all funds held by the Fiscal Agent pursuant to the Funding Loan Agreement including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which no Funding Loan Note is repaid in full in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

(j) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 9.7 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Tax Counsel that such action will not impair the excluding of interest on the Funding Loan from gross income for purposes of federal income taxation, a copy of which shall be provided to the Fiscal Agent.

## **ARTICLE X**

### **THE FISCAL AGENT**

10.1 Appointment of Fiscal Agent; Acceptance. The Governmental Lender hereby appoints U.S. Bank 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.

#### 10.2 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) If an event of default exists hereunder or under any Borrower Loan Document, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 10.2(c)(4) hereof, use the same degree of care and skill in their exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business.

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(1) This subsection shall not be construed to limit the effect of Section 10.2(a);

(2) 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;

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

(4) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

(d) 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 10.2.

(e) 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.

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

10.3 Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document, and provided that the Fiscal Agent is aware 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 Investor Limited Partner and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.2 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 10.4(g) hereof, unless such default shall have been cured or waived.

10.4 Certain Rights of Fiscal Agent. Except as otherwise provided in Section 10.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request,

direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

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

(c) Whenever in the administration of this Funding Loan Agreement 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 Funding Lender 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 at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct;

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

(f) The Fiscal Agent may execute any of the trusts 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 fee owing to the Governmental Lender pursuant to the Regulatory Agreement when due, unless the Fiscal Agent shall be specifically notified by a written notice of such default by the Governmental Lender 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 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.

10.5 Not Responsible for Recitals.

(a) The recitals contained herein and in the Funding Loan Notes shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the any revenues pledged hereunder, 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.

(b) 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.

(c) The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Development. 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.

(d) 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.

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

10.7 Moneys Held in Trust. Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent 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.

10.8 Compensation and Reimbursement.

(a) 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, both as finally adjudicated by a court of law.

(b) When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of



its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

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

(d) As security for the performance of the obligations of the Borrower under this Section 10.8 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.

(e) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement for any compensation earned or expenses incurred prior to such resignation, removal, payment of the Funding Loan or the Borrower Loan or the release of the Funding Loan Agreement.

10.9 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 of California approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

10.10 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 X 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, 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 in its sole and absolute discretion, (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 in their sole and absolute discretion, 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 revenues pledged hereunder 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 such resignation, removal or incapability or the occurrence of such vacancy, 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, 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.

#### 10.11 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, trusts 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 upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to 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, powers and trusts.

(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 X, to the extent operative.

10.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall

be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article X, 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 Funding Lender within 30 days of such succession.

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

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon written notice to the Governmental Lender, the Funding Lender and the Borrower, and with the 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, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co-fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

10.14 No Recourse Against Officers or Employees of Fiscal Agent. No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

**ARTICLE XI**  
**EVENTS OF DEFAULT AND REMEDIES**

11.1 Events of Default. Each of the following shall be an “**Event of Default**”:

(a) The failure to pay any installment of interest or principal under either Funding Loan Note, and such failure shall continue during and after the period specified in Section 11.2; or

(b) The Governmental Lender shall fail to perform or observe any of its covenants or agreements contained in this Funding Loan Agreement or either Funding Loan Note including or any representation or warranty of the Governmental Lender hereunder shall be determined by the Bank to have been false in any material respect when made; or

(c) The Borrower shall fail to pay to the Governmental Lender when due the amounts required to be paid under the Borrower Loan Agreement or any Borrower Note, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency receivership, liquidation or similar proceedings after the expiration of any curative provision contained therein; or

(d) The occurrence of any other Event of Default under and as defined in the Borrower Loan Agreement.

11.2 Notice of Default; Opportunity to Cure. No default under Section 11.1 hereof shall constitute an Event of Default until:

(a) The Governmental Lender and the Borrower in accordance with Section 12.2 shall have received notice by registered or certified mail of such default specifying the same and stating that such notice is a “**Notice of Default**”; and

(b) The Governmental Lender and the Borrower shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within 30 days, such default shall not constitute an Event of Default hereunder so long as (i) the Governmental Lender or the Borrower institutes corrective action within said 30 days, and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of the Tax Counsel to the Governmental Lender, the failure to cure said default within 30 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Funding Loan Notes. The Governmental Lender may, but shall not in any way be required to, correct a default on behalf of the Borrower under the Borrower Loan Agreement or the Borrower Notes.

11.3 Remedies. Whenever any Event of Default under Section 11.1 hereof shall have happened and be continuing, the Bank may take whatever remedial steps as may be allowed under the law, this Funding Loan Agreement and the other Funding Loan Documents. Upon the occurrence of an Event of Default, the Bank may (i) by notice in writing to the Governmental Lender, declare the principal of the Funding Loan Notes then outstanding, and the interest accrued and premium thereon, to be due and payable immediately, upon any such declaration the same

shall become and shall be immediately due and payable, anything in this Funding Loan Agreement or in either Funding Loan Note contained to the contrary notwithstanding, and/or (ii) pursue such other remedies as are permitted under applicable law, subject in any event to the provisions of Sections 4.1, 5.2 and 6.13 hereof. Upon the occurrence and during the continuance of an Event of Default, Bank shall have all rights, powers and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Bank may proceed at law or in equity or otherwise, to the extent permitted by applicable law: (a) to take possession of the Security or any part thereof, with or without legal process, and to hold, service and administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited) the sale of all or any part of the Security; (b) to become mortgagee of record for the Borrower Loan; (c) to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, to take such alternate courses of action, as it may deem appropriate; or (d) to take such steps to protect and enforce its rights whether by action, suit or proceeding and equity or at law for the specific performance of any term, condition or agreement in this Funding Loan Agreement, the Funding Loan Notes or the other Funding Loan Documents or in and on the execution of any power herein granted, or for the foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Bank may elect, subject in any event to the Reserved Rights.

11.4 Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender or the Bank should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Governmental Lender contained herein, the Governmental Lender shall cause the Borrower (solely by its execution and assignment of the Borrower Loan Agreement) on demand to pay to the Governmental Lender or the Bank the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

11.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Funding Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article XI, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

11.6 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Funding Loan Agreement should be breached by the Governmental Lender or the Borrower and thereafter waived by the Bank, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

11.7 Actions Under Borrower Loan Documents. Whether or not an Event of Default has occurred, the Bank, in its sole discretion, shall have the sole right to waive or forebear any term, condition, covenant or agreement in the Borrower Loan Documents applicable to the Borrower or any breach thereof, other than the covenant that would adversely impact the tax-exempt status of

the interest on the Funding Loan Notes and provided that the Bank shall have no right to waive and the Governmental Lender may seek specific performance by Borrower to enforce the Reserved Rights.

11.8 Application on Money Collected. Any money collected by Bank pursuant to this Article and any other sums held by Bank as part of the Security, shall be applied in the following order, at the date or dates fixed by the Bank:

(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 Governmental Lender or Bank;

(b) Second, to the payment of the whole amount of the Funding Loan, as evidenced by the Funding Loan Notes, then due and unpaid and 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 sum sufficient therefor has been so collected at the rates prescribed therefore in the Funding Loan Notes) on overdue principal of and any premium on the Funding Loan so called provided, however, that partial payments of any portion of the Funding Loan shall be applied by Bank in such order priority as Bank may determine in its sole and absolute discretion; and

(c) Third, the remainder, if any to the person legally entitled thereto.

11.9 Suits to Protect the Security. The Bank shall have the power to institute and maintain such proceedings as Bank 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 the interest in the Security and in the rent, issues, profits, revenues and other income arising therefrom.

## **ARTICLE XII** **MISCELLANEOUS**

12.1 Entire Agreement. This Funding Loan Agreement, the Funding Loan Notes and the other Funding Loan Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and the Bank with respect to the subject matter hereof.

12.2 Notices. All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been personally delivered or mailed by first class mail postage prepaid, addressed as follows:

If to the Governmental  
Lender:

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

With copies to: (None of which copies shall constitute notice) City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140  
San Francisco, California 94102  
Attention: City Treasurer

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

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

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 336  
San Francisco, CA 94102  
Attention: Finance Team

If to the Owner: Fillmore Marketplace Housing Partners, LP  
44 Montgomery Street, Suite 1300  
San Francisco, California 94104  
Attention: Ann Silverberg

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, California 90071  
Attention: Nicole Deddens, Esq.

With a copy to (which copy shall not constitute notice): San Francisco Housing Development Corporation  
4439 Third Street  
San Francisco, CA 94124  
Attention:

If to the Investor Limited Partner: Raymond James Housing Opportunities Fund 36 L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Email Address: Steve.Kropf@RaymondJames.com  
Attention: Steven J. Kropf, President

With a copy to (which copy shall not constitute notice): Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attention: Nathan Bernard

If to the Bank: MUFG Union Bank, N.A.  
Loan Administration Department  
145 S. State College Blvd.  
Suite 600  
Brea, CA 92821  
Attention: Manager

with copy to: MUFG Union Bank, N.A.  
Community Development Finance Department  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Attention: Manager

With a copy to (which copy shall not constitute notice): Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626

12.3 Assignments. Except as provided in Section 4.3, neither this Funding Loan Agreement nor the Borrower Loan Agreement may be assigned by any party hereto or thereto in whole or in part without the prior written consent of the other, which consent shall not be unreasonably withheld; and, in the case of the Governmental Lender, to the extent such assignment is not in contravention of its policies for tax-exempt debt.

12.4 Severability. If any provision of this Funding Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

12.5 Counterparts/Electronic Signatures. This Funding Loan Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. Delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image, or other electronic means, shall be effective as delivery of an originally executed counterpart. The words "execution," "signed," "signature," and words of like import in this document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, Electronic Signatures in Global and National Commerce Act, any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, and the parties hereto hereby waive any objection to the contrary.



12.6 Amendments, Changes and Modifications. Except as otherwise provided in this Funding Loan Agreement, this Funding Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto. The Bank may require, as a condition to any amendment, change or modification of this Funding Loan Agreement or the other Funding Loan Documents that the Bank shall have received, at the expense of the Borrower, an opinion of Tax Counsel that such amendment shall not adversely affect the exclusion of interest on the Funding Loan Notes from gross income for purposes of federal income tax.

12.7 Governing Law. This Funding Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

12.8 Term of Agreement. This Funding Loan Agreement shall be in full force and effect from the date hereof until such time as the Funding Loan shall have been fully paid or provision made for such payment. Time is of the essence in this Funding Loan Agreement.

12.9 Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Funding Loan.

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

12.11 No Recourse with Respect to Governmental Lender. Notwithstanding anything to the contrary herein or to the contrary in any Financing Document, no recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Funding Loan Notes shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Funding Loan Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Funding Loan Notes. The Funding Lender's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth in Article VI hereof and, if an Event of Default also exists under the Borrower Loan Agreement or the Project 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 Funding Loan Notes, the Funding Lender shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender or the Funding Lender may have against the Borrower.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

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

Approved as to Form:  
DENNIS J. HERRERA  
City Attorney

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

MUFG UNION BANK, N.A., as Bank

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

U.S. BANK NATIONAL ASSOCIATION, as  
Fiscal Agent

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

**EXHIBIT A**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(FILLMORE MARKETPLACE APARTMENTS), SERIES 2021A -1**

FOR VALUE RECEIVED, the City and County of San Francisco (the “**Governmental Lender**”), acknowledges itself indebted hereby promises to pay to the order of MUFG UNION BANK, N.A. (the “**Bank**”), or its successors and assigns, the sum of up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Maximum Principal Amount”), together with interest on the advanced and unpaid principal amount of this Funding Loan Note at the same interest rate as the applicable interest rate specified in the Borrower Loan Agreement with respect to the Borrower Notes, until the Governmental Lender’s obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The Outstanding Balance shall mean the principal balance of the Funding Loan which has been advanced by the Bank with respect to this Funding Loan Note under Section 3.4 of the Funding Loan Agreement described below, and that has not been repaid by the Governmental Lender to the Bank as of the date of calculation of the Outstanding Balance. This Funding Loan Note shall be governed by and be payable in accordance with the terms and conditions of the Funding Loan Agreement dated as of March 1, 2021 (the “**Funding Loan Agreement**”), among the Bank, the Governmental Lender and [\_\_\_\_\_], as fiscal agent (“**Fiscal Agent**”) pursuant to which the Bank has made the Funding Loan to the Governmental Lender.

This Funding Loan Note is one of two Funding Loan Notes issued to evidence obligation of the Governmental Lender to repay the Funding Loan to the Bank. The other Funding Loan Note is designated the “Multifamily Housing Revenue Note (Fillmore Marketplace Apartments) Series 2021A-2,” issued in the aggregate principal amount of \$\_\_\_\_\_.

This Funding Loan Note is issued to evidence a portion of the Funding Loan in an amount up to the Maximum Principal Amount by the Bank to the Governmental Lender and the obligation of the Governmental Lender to repay the same, but only from amounts received by or on behalf of the Governmental Lender from Fillmore Marketplace Housing Partners, L.P., a California limited partnership (the “**Borrower**”), with respect to a corresponding Borrower Note pursuant to a Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program) dated as of March 1, 2021, by and among the Governmental Lender, the Bank and the Borrower (the “**Borrower Loan Agreement**”) and the other Borrower Loan Documents (as defined in the Borrower Loan Agreement).

Monthly payments of principal and interest shall be payable under this Funding Loan Note to the same extent as payments of principal and interest are due and payable on the corresponding Borrower Note, as provided in the Borrower Loan Agreement. The Outstanding Balance of this Funding Loan Note shall be due and payable in its entirety on \_\_\_\_\_ 1, 20\_\_.

The Funding Loan and this Funding Loan Note are pass-through obligations relating to the Borrower Loan made by Governmental Lender from the proceeds of the Funding Loan to the Borrower under the Borrower Loan Agreement. This Funding Loan Note shall correspond in payment terms to a Borrower Note, as provided in the Funding Loan Agreement. Reference is made to the Borrower Loan Agreement and to the Borrower Notes for complete payment and prepayment terms of the Borrower Notes.

In the event the Governmental Lender fails to make the timely payment of any monthly payment, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Governmental Lender shall pay (solely from amounts received from the Borrower as late charges under the Borrower Loan Agreement) to the Bank a late charge in the amount specified in Section [3.6] of the Borrower Loan Agreement. If the principal balance of this Funding Loan Note is accelerated following an Event of Default (as defined in the Funding Loan Agreement), the Bank may increase the interest rate on this Funding Loan Note to the Default Rate (as defined in the Borrower Loan Agreement).

The Governmental Lender may, at any time, prepay the principal amount of this Funding Loan Note to the same extent and subject to the terms and conditions set forth in the Borrower Loan Agreement for the prepayment of the corresponding portion of the Borrower Note.

All sums due hereunder shall be paid in lawful money of the United States of America. Interest on this Funding Loan Note shall be computed as provided for in the corresponding Borrower Note. All payments made hereunder shall be credited and applied as provided in the Funding Loan Agreement.

THIS FUNDING LOAN NOTE IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE PLEDGE AND ASSIGNMENT OF CERTAIN PAYMENTS ON THE CORRESPONDING BORROWER NOTE OR FUNDS OTHERWISE PROVIDED UNDER THE BORROWER LOAN DOCUMENTS. NONE OF THE GOVERNMENTAL LENDER, THE STATE OF CALIFORNIA, OR ANY OF ITS POLITICAL SUBDIVISIONS SHALL BE DIRECTLY, INDIRECTLY, CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THIS FUNDING LOAN NOTE, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR PAYMENT OF THIS FUNDING LOAN NOTE. THIS FUNDING LOAN NOTE IS NOT SECURED BY A PLEDGE OF THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS NOR DOES THE FUNDING LOAN CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

THIS FUNDING LOAN NOTE AND THE REPAYMENT PROVISIONS CONTAINED HEREIN ARE SUBJECT TO THE PROVISIONS AND LIMITATIONS CONTAINED IN SECTIONS 4.1, 5.2 AND 6.13 OF THE FUNDING LOAN AGREEMENT.

No delay or omission on the part of Bank in exercising any remedy, right or option under this Funding Loan 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 Bank under this Funding Loan Note and the Funding Loan Documents are and shall be cumulative and are in addition to all the rights, remedies and options of the Bank at law or in equity or under any other agreement.

Presentment for payment, notice of dishonor, protest or notice of protest are hereby waived. The acceptance by Bank 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 owner hereof any sum and amount less than the amount then due shall be deemed an acceptance on account only and upon condition of the acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be at default notwithstanding such acceptance of such amount on account thereof. Consent by the Bank to any action of Governmental Lender which is subject to approval of the Bank hereunder shall not be deemed a waiver of the right to require such consent or approval to future successive actions, a waiver of the right to assert the defense of any statute of limitations to any debt or obligation hereunder and consent to renewals and extensions of time for payment of any amounts due under this Funding Loan Note.

This Funding Loan Note may only be transferred in accordance with the requirements of Section 4.3 of the Funding Loan Agreement, and any such transfer shall be recorded in the Note Register maintained by the Bank.

Capitalized terms used herein which are not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Funding Loan Note to be executed in its name and on its behalf all as of the \_\_\_\_ day of March, 2021.

CITY AND COUNTY OF SAN FRANCISCO

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

**EXHIBIT A-2**

\$ \_\_\_\_\_  
**CITY AND COUNTY OF SAN FRANCISCO**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(FILLMORE MARKETPLACE APARTMENTS), SERIES 2021A -2**

FOR VALUE RECEIVED, the City and County of San Francisco (the “Governmental Lender”), acknowledges itself indebted and hereby promises to pay to the order of MUFG Union Bank, N.A. (the “Bank”), or its successors and assigns, the sum of up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Maximum Principal Amount”), together with interest on the advanced and unpaid principal amount of this Funding Loan Note at the same interest rate as the applicable interest rate specified in the Borrower Loan Agreement with respect to the Borrower Notes, until the Governmental Lender’s obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The Outstanding Balance shall mean the principal balance of the Funding Loan which has been advanced by the Bank with respect to this Funding Loan Note under Section 3.4 of the Funding Loan Agreement described below, and that has not been repaid by the Governmental Lender to the Bank as of the date of calculation of the Outstanding Balance. This Funding Loan Note shall be governed by and be payable in accordance with the terms and conditions of the Funding Loan Agreement dated as of March 1 2021 (the “Funding Loan Agreement”), between the Bank and the Governmental Lender pursuant to which the Bank has made the Funding Loan to the Governmental Lender.

This Funding Loan Note is one of two Funding Loan Notes issued to evidence obligation of the Governmental Lender to repay the Funding Loan to the Bank. The other Funding Loan Note is designated the “Multifamily Housing Revenue Note (Fillmore Marketplace Apartments) Series 2021A-2,” issued in the aggregate principal amount of \$\_\_\_\_\_.

This Funding Loan Note is issued to evidence a portion of the Funding Loan in an amount up to the Maximum Principal Amount by the Bank to the Governmental Lender and the obligation of the Governmental Lender to repay the same, but only from amounts received by or on behalf of the Governmental Lender from Fillmore Marketplace Housing Partners, L.P., a California limited partnership (the “Borrower”), with respect to a corresponding Borrower Note pursuant to a Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program) dated as of March 1, 2021, by and among the Governmental Lender, the Bank and the Borrower (the “Borrower Loan Agreement”) and the other Borrower Loan Documents (as defined in the Borrower Loan Agreement).

Monthly payments of principal and interest shall be payable under this Funding Loan Note to the same extent as payments of principal and interest are due and payable on the Borrower Notes, as provided in the Borrower Loan Agreement. The Outstanding Balance of this Funding Loan Note shall be due and payable in its entirety on [\_\_\_\_\_ 1, 20\_\_].

The Funding Loan and this Funding Loan Note are pass-through obligations relating to the Borrower Loan made by Governmental Lender from the proceeds of the Funding Loan to the Borrower under the Borrower Loan Agreement. This Funding Loan Note shall correspond in

payment terms to a Borrower Note, as provided in the Funding Loan Agreement. Reference is made to the Borrower Loan Agreement and to the Borrower Notes for complete payment and prepayment terms of the Borrower Notes.

In the event the Governmental Lender fails to make the timely payment of any monthly payment, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Governmental Lender shall pay (solely from amounts received from the Borrower as late charges under the Borrower Loan Agreement) to the Bank a late charge in the amount specified in Section [3.6] of the Borrower Loan Agreement. If the principal balance of this Funding Loan Note is accelerated following an Event of Default (as defined in the Funding Loan Agreement), the Bank may increase the interest rate on this Funding Loan Note to the Default Rate (as defined in the Borrower Loan Agreement).

The Governmental Lender may, at any time, prepay the principal amount of this Funding Loan Note to the same extent and subject to the terms and conditions set forth in the Borrower Loan Agreement for the prepayment of the corresponding portion of the Borrower Notes.

All sums due hereunder shall be paid in lawful money of the United States of America. Interest on this Funding Loan Note shall be computed as provided for the corresponding Borrower Note. All payments made hereunder shall be credited and applied as provided in the Funding Loan Agreement.

THIS FUNDING LOAN NOTE IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE PLEDGE AND ASSIGNMENT OF THE PLEDGED REVENUES AND CERTAIN PAYMENTS ON THE CORRESPONDING BORROWER NOTE OR FUNDS OTHERWISE PROVIDED UNDER THE BORROWER LOAN DOCUMENTS. NONE OF THE GOVERNMENTAL LENDER, OR THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS SHALL BE DIRECTLY, INDIRECTLY, CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THIS FUNDING LOAN NOTE, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR PAYMENT OF THIS FUNDING LOAN NOTE. THIS FUNDING LOAN NOTE IS NOT SECURED BY A PLEDGE OF THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER, OR THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS, NOR DOES THE FUNDING LOAN CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

THIS FUNDING LOAN NOTE AND THE REPAYMENT PROVISIONS CONTAINED HEREIN ARE SUBJECT TO THE PROVISIONS AND LIMITATIONS CONTAINED IN SECTIONS 4.1, 5.2 AND 6.14 OF THE FUNDING LOAN AGREEMENT.

No delay or omission on the part of Bank in exercising any remedy, right or option under this Funding Loan 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



Bank under this Funding Loan Note and the Funding Loan Documents are and shall be cumulative and are in addition to all the rights, remedies and options of the Bank at law or in equity or under any other agreement.

Presentment for payment, notice of dishonor, protest or notice of protest are hereby waived. The acceptance by Bank 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 owner hereof any sum and amount less than the amount then due shall be deemed an acceptance on account only and upon condition of the acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be at default notwithstanding such acceptance of such amount on account thereof. Consent by the Bank to any action of Governmental Lender which is subject to approval of the Bank hereunder shall not be deemed a waiver of the right to require such consent or approval to future successive actions, a waiver of the right to assert the defense of any statute of limitations to any debt or obligation hereunder and consent to renewals and extensions of time for payment of any amounts due under this Funding Loan Note.

This Funding Loan Note may only be transferred in accordance with the requirements of Section 4.3 of the Funding Loan Agreement, and any such transfer shall be recorded in the Note Register maintained by the Bank.

Capitalized terms used herein which are not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Funding Loan Note to be executed in its name and on its behalf all as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO

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

## **EXHIBIT B**

### **FORM OF INVESTOR'S LETTER**

City and County of San Francisco  
San Francisco, California

Re: \$\_\_\_\_\_ City and County of San Francisco Multifamily Housing  
Revenue Note (Fillmore Marketplace Apartments), Series 2021A -1

\$\_\_\_\_\_ City and County of San Francisco Multifamily Housing  
Revenue Note (Fillmore Marketplace Apartments), Series 2021A-2

Ladies and Gentlemen:

The undersigned (the “**Holder**”), being the owner of the above-referenced notes (collectively, the “**Funding Loan Notes**”) does hereby certify, represent and warrant for the benefit of the City and County of San Francisco (the “**Governmental Lender**”) that:

(a) The Holder is an Approved Institutional Buyer, as defined in Section 1.1 of the Funding Loan Agreement, dated as of March 1, 2021 (the “**Funding Loan Agreement**”), between the Governmental Lender and MUFG Union Bank, N.A..

(b) The Holder has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, and is capable of evaluating the merits and risks of its investment in the Funding Loan Notes. The Holder is able to bear the economic risk of, and an entire loss of, an investment in the Funding Loan Notes.

(c) The Holder is acquiring the Funding Loan Notes solely for its own account for investment purposes, and does not presently intend to make a public distribution of, or to resell or transfer, all or any part of the Funding Loan Notes, except as permitted by Section 4.3 of the Funding Loan Agreement.

(d) The Holder understands that the Funding Loan Notes have not been registered under the Securities Act of 1933, as amended, or under any state securities laws. The Holder agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Funding Loan Notes by it, and further acknowledges that any current exemption from registration of the Funding Loan Notes does not affect or diminish such requirements.

(e) The Holder is familiar with the conditions, financial and otherwise, of the Borrower (as such term is used in the Funding Loan Agreement) and understands that the Borrower has no significant assets other than the Development (as defined in the Funding Loan Agreement) for payment of the Borrower Loan (as defined in the Funding Loan Agreement). Further, the Holder understands that the Funding Loan Notes involve a high degree of risk. Specifically, and without in any manner limiting the foregoing, the Holder understands and acknowledges that, among other risks, the Funding Loan Notes payable solely from payments made by the Borrower on the

Borrower Loan. The Holder has been provided an opportunity to ask questions of, and the Holder has received answers from, representatives of the Borrower regarding the terms and conditions of the Funding Loan Notes and the Borrower Loan. The Holder has obtained all information requested by it in connection with the issuance of the Funding Loan Notes as it regards necessary to evaluate all merits and risks of its investment in the Funding Loan Notes. The Holder has reviewed the documents executed in conjunction with the issuance of the Funding Loan Notes, including, without limitation, the Funding Loan Notes, the Funding Loan Agreement, the Borrower Notes (as such term is defined in the Funding Loan Agreement) and the Borrower Loan Agreement.

(f) The Holder has authority to purchase the Funding Loan Notes and to execute this letter and any other instruments and documents required to be executed by the Holder in connection with its purchase of the Funding Loan Notes. The individual who is signing this letter on behalf of the Holder is a duly appointed, qualified, and acting officer of the Holder and is authorized to cause the Holder to make the certificates, representations and warranties contained herein by execution of this letter on behalf of the Holder.

(g) In entering into this transaction, the Holder has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences or other aspects of its investment in the Funding Loan Notes, 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 Development, 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 secure repayment of the Funding Loan Notes.

(h) The Holder understands that the Funding Loan Notes are not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, the State of California or any political subdivision or taxing district thereof; that the Funding Loan Notes will never represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Funding Loan Notes; and that the liability of the Governmental Lender with respect to the Funding Loan Notes is subject to further limitations as set forth in the Funding Loan Notes and the Funding Loan Agreement.

(i) The Holder has been informed that the Funding Loan Notes (i) have not been and will not be registered or otherwise qualified for sale under the “**Blue Sky**” laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

(j) The Holder acknowledges that it has the right to sell and transfer the Funding Loan Notes, subject to compliance with the transfer restrictions set forth in Section 4.3 of the Funding Loan Agreement, including in certain circumstances the requirement for the delivery to the Governmental Lender of a holder’s letter in the same form as this letter, including this paragraph. Failure to comply with the provisions of Section 4.3 of the Funding Loan Agreement shall cause the purported transfer to be null and void. The Holder agrees to indemnify and hold harmless the

Governmental Lender with respect to any claim asserted against the Governmental Lender that arises with respect to any sale, transfer or other disposition of the Funding Loan Notes by the Holder or any transferee thereof in violation of the provisions of the Funding Loan Agreement.

(k) None of the Governmental Lender, its governing body, or any of its employees or agents will have any responsibility to the Holder for the accuracy or completeness of information obtained by the Holder from any source regarding the Borrower or its financial condition or regarding the Funding Loan Notes, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Governmental Lender to the Holder with respect to the Funding Loan Notes. The Holder acknowledges that, as between the Holder and all of such parties, the Holder has assumed responsibility for obtaining such information and making such review as the Holder deemed necessary or desirable in connection with its decision to purchase the Funding Loan Notes.

(l) The Holder acknowledges that the Funding Loan Notes are exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the Governmental Lender has not undertaken to provide any continuing disclosure with respect to the Funding Loan Notes.

The Holder acknowledges that the ownership of the Funding Loan Notes by the Holder is subject to the certifications, representations and warranties herein to the addressees hereto. Capitalized terms used herein and not otherwise defined herein have the meanings given such terms in the Funding Loan Agreement.

[HOLDER]

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

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

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

## **EXHIBIT C**

### **FORM OF WRITTEN REQUISITION OF THE BORROWER**

To: MUFG Union Bank, N.A., as fiscal agent (the “Fiscal Agent”) under that certain Funding Loan Agreement, dated as of March 1, 2021, among MUFG Union Bank, N.A., in its capacity as the funding lender, the City and County of San Francisco, as Governmental Lender, and the Fiscal Agent (the “Funding Loan Agreement”).

1. You are requested to disburse funds from the Project Fund pursuant to Section 9.6 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

2. The undersigned certifies that:

(i) there has been received no notice (A) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (B) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) such requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on the requisition has been incurred in or about the construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) such requisition contains no items representing any Costs of Issuance or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) not less than [97]% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Funding Loan Notes plus (B) all amounts allocated to the Funding Loan Notes previously disbursed from the Project Fund, have been or will be applied by the Borrower to pay Qualified Project Costs;

(vi) as of the date hereof no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement; and

(vii) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby among the sources for payment.

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

BORROWER:

\_\_\_\_\_

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

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

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

APPROVED:

MUFG UNION BANK, N.A.,  
in its capacity as funding lender

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

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

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

## EXHIBIT D

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

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

1. Nondiscrimination; Penalties.

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

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

(c) *Condition to Contract.* As a condition to the Funding Loan Agreement, the Obligated Party shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Funding Loan Agreement. By entering into this Funding Loan 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. Under 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 Americans with Disabilities Act. The Obligated Party shall provide the services specified in the Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

7. Limitations on Contributions. By executing this Agreement, the Obligated Party acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 20 percent in such Obligated Party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Obligated Party. The Obligated Party must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. Requiring Minimum Compensation for Covered Employees. The Obligated Party shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Funding Loan Agreement, the Obligated Party certifies that it is in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Obligated Party shall comply with San Francisco Administrative Code Chapter 12Q. The Obligated Party shall choose and perform one of the Health Care Accountability options set forth in San Francisco



Administrative Code Chapter 12Q.3. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12Q.

10. Prohibition on Political Activity with City Funds. In performing the services provided under the Funding Loan 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 consistent with the restrictions stated in Chapter 12M and in this Funding Loan Agreement and only as necessary in performing the services provided under the Funding Loan Agreement. The Obligated Party is subject to the enforcement and penalty provisions in Chapter 12M.

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

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

13. Reserved.

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

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

16. Assignment. The services provided under the Funding Loan Agreement to be performed by the Obligated Party are personal in character and neither this Funding Loan Agreement nor any duties or obligations may be assigned or delegated by the Obligated Party unless first approved by the City by written instrument executed and approved in the same manner as this Funding Loan Agreement. Any purported assignment made in violation of this provision shall be null and void.

17. 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 provided remedies for noncompliance.

18. Cooperative Drafting. This Funding Loan Agreement has been drafted through a cooperative effort of the City and the Obligated Party, and all parties have had an opportunity to have the Funding Loan Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Funding Loan 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 Funding Loan Agreement.

19. Laws Incorporated by Reference. The full text of the laws listed in this Exhibit, including enforcement and penalty provisions, are incorporated into this Funding Loan Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

20. Sugar-Sweetened Beverage Prohibition. The Obligated Party agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Funding Loan Agreement.

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

22. Prevailing Wages. Obligated Party understands and agrees that all provisions of Section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are hereby incorporated into this Funding Loan Agreement. Obligated Party also understands and agrees that all provisions of Sections 6.22E and 6.22F of the San Francisco Administrative Code are hereby incorporated into this Funding Loan Agreement. Obligated Party also understands and agrees that all applicable provisions of the Davis-Bacon Act (40 U.S.C. §§3141 et seq.) are hereby incorporated into this Funding Loan Agreement.



**CONSTRUCTION AND PERMANENT LOAN AGREEMENT  
(Multifamily Housing Back to Back Loan Program)  
(Fillmore Marketplace Housing Partners, L.P.)**

**THIS AGREEMENT** is made as of the Contract Date by and among Borrower, Governmental Lender and Bank in connection with the following:

- A.** Borrower has requested that Governmental Lender provide a construction and permanent loan to Borrower to finance the rehabilitation of the Improvements on the Real Property.
- B.** Borrower owns or will own, concurrently with the first loan disbursement under this Agreement, the Property.
- C.** Borrower intends to rehabilitate an affordable housing apartment project on the Real Property.
- D.** Governmental Lender, Bank and Fiscal Agent have entered into the Funding Loan Agreement whereby Bank has agreed to make the Funding Loan to Governmental Lender for the sole purpose of making funds available to the Governmental Lender to make the Borrower Loan to Borrower pursuant to this Agreement in the manner and on the terms set forth in the Funding Loan Agreement, which terms include, without limitation, the obligation of the Governmental Lender to make loan payments to the Bank from amounts received by Governmental Lender from Borrower pursuant to this Agreement and the Borrower Notes in repayment of the amounts loaned to Governmental Lender under the Funding Loan Agreement as evidenced by the Funding Loan Notes. Governmental Lender has irrevocably pledged and assigned to Bank, as security for Governmental Lender's obligations to repay amounts due under the Funding Loan Notes and its obligations under the Funding Loan Agreement, all right, title and interest to the Borrower Loan Documents (other than the Reserved Rights, as defined in the Funding Loan Agreement), including all rights to payments with respect to the Borrower Notes. Upon the execution of the Funding Loan Notes, all right, title and interest of Governmental Lender under and in the Borrower Loan (other than the Reserved Rights, as defined in the Funding Loan Agreement) will be assigned by Governmental Lender to Bank pursuant to the Funding Loan Agreement and the Assignment of Deed of Trust.
- E.** All of the rights, powers, elections, determinations, remedies, duties and functions of Governmental Lender hereunder (other than the Reserved Rights, as defined in the Funding Loan Agreement) may be exercised and performed on behalf of Governmental Lender by Bank unless and until the assignment to Bank is terminated, modified, assigned, in whole or in part, or otherwise amended in accordance with the provisions of the Funding Loan Agreement.
- F.** Subject to the execution of the Funding Loan Agreement and the terms and conditions of this Agreement, Governmental Lender is willing to make the Borrower Loan to Borrower.

THEREFORE, the parties hereto agree as follows:

**1. DEFINITIONS.**

**1.1 Acceptable Unit Lease.** A lease agreement on a lease form approved by Bank which is entered into by and between Borrower and the lessee of a Unit and the terms (including the amount of rent payments) of which comply with the provisions of all Regulatory Agreements, the City Loan Documents, the HCD Loan Documents and the Seller Loan Documents.

**1.2 Act.** 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.

**1.3 Advance.** Each disbursement of proceeds of the Borrower Loan made pursuant to this Agreement.

**1.4 Aggregate Change Order Limit.** \$500,000.

**1.5 Agreement or Borrower Loan Agreement.** This Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program).

**1.6 Agreement to Furnish Insurance.** The Agreement to Furnish Insurance dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.7 Allocation Committee.** The California Tax Credit Allocation Committee and any successor governmental agency appointed to carry out the obligations of the Allocation Committee.

**1.8 Appraisal.** An appraisal or reappraisal of the Property (complying with Bank's appraisal policy) performed or to be performed by a certified real estate appraiser engaged by Bank.

**1.9 Appraised Value.** The market value of the Property as determined by Bank in its business judgment, reasonably exercised, based upon an Appraisal.

**1.10 Architect.** [BC&E Group, LLP] [**CHECK**], or such other architect as may be approved by Bank.

**1.11 Architect's Agreement.** The agreement between Borrower and Architect relating to the design and rehabilitation of the Improvements.

**1.12 Assignment of Construction Contract.** The Assignment of Construction Contract dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.13 Assignment of Hedge.** As defined in Section 7.45.5.

**1.14 Assignment of Partnership Interest (GP).** An Assignment of Partnership Interest dated as of the Contract Date executed by each General Partner in favor of Governmental Lender and Bank as additional collateral security for the performance of the Borrower's obligations under the Borrower Loan Documents, prior to Conversion, assigning to Governmental Lender and Bank all of each such General Partner's rights as a general partner in Borrower.

**1.15 Assignment of Plans and Specifications.** The Assignment of Architect's Agreement, Plans and Specifications dated as of the Contract Date executed by Borrower, in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.16 Assignment of Tax Credits and Partnership Interests.** An Assignment of Rights to Tax Credits and Partnership Interests dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank as additional collateral security for the performance of Borrower's obligations under the Borrower Loan Documents, prior to Conversion, assigning to Governmental Lender and Bank all of Borrower's rights under the Tax Credit Allocation Documents including, without limitation, the right to receive the Tax Credits set forth under the Tax Credit Allocation Documents and any interest Borrower may have in any partnership interest of Tax Credit Investor in the Borrower.

**1.17 Bank.** MUFG Union Bank, N.A., (i) acting in its capacity as owner of the Funding Loan Notes and as assignee of and agent under this Agreement for the Governmental Lender pursuant to the Funding Loan Agreement, and (ii) its successors and assigns.

**1.18 Bonded Work.** Offsite, common area, or other improvements required by a Governmental Authority (if any) or for which bonds may be required in connection with the development of the Real Property.

**1.19 Borrower.** Fillmore Marketplace Housing Partners, L.P., a California limited partnership.

**1.20 Borrower's Equity.** As of any date of determination, Borrower's funds expended on Project costs in accordance with this Agreement as of such date, including Borrower's Funds and capital contributions made by the Tax Credit Investor, but excluding proceeds of the Borrower Loan, as determined by Bank in its reasonable discretion.

**1.21 Borrower's Funds.** All funds of Borrower deposited into Borrower's Funds Account pursuant to the terms of this Agreement, to be disbursed in payment of Construction Costs as more particularly set forth in this Agreement.

**1.22 Borrower's Funds Account.** An account with Bank into which Borrower's Funds shall be deposited as provided for in Section 7.2 or any other provision of this Agreement.

**1.23 Borrower Loan.** The loan in the maximum principal amount of [\$21,884,000] [CHECK] made by the Governmental Lender to Borrower pursuant to this Agreement.

**1.24 Borrower Loan Documents.** This Agreement, the Borrower Notes, the Tax-Exempt Regulatory Agreement, the Deed of Trust, the Guaranty, the ECA, the Security Documents, the Financing Statements, the Agreement to Furnish Insurance, any Hedge Documents, the Indemnity Agreement and all other agreements, instruments and documents (together with amendments, supplements and replacements thereto) now or hereafter executed and delivered to Governmental Lender or Bank in connection with the Borrower Loan.

**1.25 Borrower Notes.** Collectively, Borrower Note A-1 and Borrower Note A-2, which evidence the Borrower Loan.

**1.26 Borrower Note A-1.** The Promissory Note A-1 (Tax-Exempt – Construction) (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as maker, in favor of Governmental Lender in the original principal amount of [ \$\_\_\_\_\_ ] [CHECK].

**1.27 Borrower Note A-2.** The Promissory Note A-2 (Tax-Exempt – Permanent) (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as maker, in favor of Governmental Lender in the original principal amount of [ \$\_\_\_\_\_ ] [CHECK].

**1.28 Business Day.** A day which is not a Saturday or Sunday on which banks in the State of California are open for business for the funding of corporate loans.

**1.29 Capital Improvement Reserve Account.** An interest bearing account established with Bank by Borrower at the time of Conversion for the purpose of funding any capital improvements which are necessary for the continued operation of the Property as determined by Bank in its reasonable discretion.

**1.30 Capital Improvements.** As defined in Section 7.36.1.

**1.31 Certification of Plans and Specifications.** The Certification of Plans and Specifications dated as of the Contract Date from Borrower, Contractor and Architect to Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.32 Change Order.** Any change or supplement to the Plans, Construction Contract or subcontract as permitted by this Agreement.

**1.33 City.** City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California.

**1.34 City Deed of Trust.** The Deed of Trust and Assignment of Rents executed by Borrower for the benefit of the City, encumbering the Project and securing repayment of amounts owing under the City Note, recorded in the Official Records substantially concurrently with the Deed of Trust, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.35 City Loan.** The [ \$ \_\_\_\_\_ ] **[CHECK]** loan made by the City to Borrower pursuant to the terms of the City Loan Agreement.

**1.36 City Loan Agreement.** The Loan Agreement entered into by and between Borrower and the City in connection with the making of the City Loan.

**1.37 City Loan Documents.** The City Loan Agreement, the City Note, the City Deed of Trust, the City Restrictions and all other documents and instruments evidencing, securing or pertaining to the City Loan.

**1.38 City Note.** The Promissory Note Secured by Deed of Trust made by Borrower to the order of the City, in the face principal amount of [ \$ \_\_\_\_\_ ] **[CHECK]**, evidencing all amounts disbursed and to be disbursed under the City Loan.

**1.39 City Restrictions.** The Regulatory Agreement by and between Borrower and the City entered into in connection with the City Loan, recorded in the Official Records substantially concurrently with the Deed of Trust.

**1.40 City Subordination Agreement.** A Subordination Agreement in form and substance satisfactory to Bank, executed by the City, Borrower and Bank, pursuant to which the City shall unconditionally subordinate the lien and effect of the City Deed of Trust and the City Restrictions to the lien and effect of the Deed of Trust, as more particularly described therein.

**1.41 Closing Date.** Either (i) the date on which the Deed of Trust is recorded and the Initial Advance is made or (ii) the date the Title Insurer has irrevocably committed to issue the Title Policy and the Bank and Governmental Lender have authorized closing of the Borrower Loan and the Funding Loan.

**1.42 Code.** The Internal Revenue Code of 1986, as amended; including (a) any successor internal revenue law and (b) the applicable regulations promulgated thereunder whether final, temporary or proposed under the Code or such successor law.

**1.43 Completion Date.** The date of Project Completion, which date shall not be later than [March 1, 2023] **[CHECK]**.

**1.44 Conditions to Conversion.** The conditions precedent to Conversion as listed on Exhibit D attached hereto.

**1.45 Construction Contract.** The agreement between Borrower and Contractor relating to the rehabilitation of the Improvements.

**1.46 Construction Costs.** All costs approved by Bank relating to the rehabilitation of the Improvements or otherwise pertaining to the Property, as set forth in the Detailed Cost Breakdown.

**1.47 Construction Phase.** The period from the Closing Date through and including the date immediately preceding the Conversion Date.

**1.48 Contract Date.** March 1, 2021.

**1.49 Contractor.** Saarman Construction, Ltd., a California corporation, or such other contractor as may be approved by Bank, or Borrower acting in the capacity of general contractor.

**1.50 Conversion.** The conversion of the Borrower Loan from the Construction Phase to the Permanent Phase.

**1.51 Conversion Date.** The date on which all Conditions to Conversion have been satisfied, as such date is established by Bank in the Conversion Notice. The Conversion Date shall be the first day of the calendar month following the month in which Bank issues the Conversion Notice, but in no event later than the Outside Conversion Date.

**1.52 Conversion Election Notice.** Written notice delivered by Borrower to Bank that Borrower has elected to convert the Borrower Loan from the Construction Phase to the Permanent Phase.

**1.53 Conversion Notice.** Written notice delivered by Bank to Borrower that the Conditions to Conversion have been fully satisfied.

**1.54 Debt Coverage Ratio.** The ratio of (i) the annual stabilized Net Operating Income for the Property during a particular period of time, to (ii) the assumed combined interest and principal payment for the Permanent Phase that would be required based upon the projected outstanding principal balance of Borrower Note A-2, as of the Conversion Date, a fixed interest rate on Borrower Note A-2 equal to the fixed rate of the Hedge applicable to Borrower Note A-2 (inclusive of the Margin applicable to Borrower Note A-2 during the Permanent Phase) and monthly amortization payments on Borrower Note A-2 based upon a 480 month amortization period, plus any required principal and interest payments under any additional financing permitted pursuant to the Borrower Loan Documents (other than loans under which debt service is payable only from "residual receipts" that remain after payment of all operating expenses and all scheduled payment or principal and interest on the Borrower Loan and any other financing).

**1.55 Deed of Trust.** The Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction and Permanent Trust Deed) (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as trustor, for the benefit of Governmental Lender and Bank, as beneficiary, as the same may from time to time be amended, modified or supplemented.

**1.56 Deed of Trust Assignment.** The Assignment of Deed of Trust and Related Documents dated as of the Contract Date by Governmental Lender in favor of Bank.

**1.57 Default Rate.** A rate equal to 5% more than the applicable interest rate set forth in the Borrower Notes.

**1.58 Detailed Cost Breakdown.** An itemized schedule on a component, unit and trade breakdown basis showing all costs and expenses required for rehabilitation of the Improvements in accordance with the Plans, which has been submitted to and approved by Bank.

**1.59 Disbursement Schedule.** The schedule or schedules for disbursement of the Advances and of Borrower's Funds, if any, set forth on Exhibit B, which may be amended from time to time by reallocations made in accordance with Section 5.5.

**1.60 Draw Request.** The certified invoice to be delivered by Borrower to Bank as a condition to Governmental Lender making an Advance, in such form and certified by Architect, together with such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information as may be reasonably required by Bank.



**1.61 ECA.** The Environmental Compliance Agreement, dated as of the Contract Date by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.62 Event of Default.** As defined in Section 8.

**1.63 Extended Use Agreement.** An “extended low-income housing commitment” as defined in Section 42(h)(6)(B) of the Code.

**1.64 Financial Statements.** Balance sheets, income statements, statements of retained earnings with supporting schedules and such other financial reports as Bank may require, in form and content reasonably acceptable to Bank.

**1.65 Financing Statements.** All UCC financing statements required in connection with the Borrower Loan.

**1.66 First Extended Outside Conversion Date.** As defined in Section 2.5.

**1.67 First Extension Term.** As defined in Section 2.5.

**1.68 First Payment Date.** April 1, 2020.

**1.69 Fiscal Agent.** The Fiscal Agent from time to time under the Funding Loan Agreement. Initially the Fiscal Agent shall be [\_\_\_\_\_] **[CHECK]**

**1.70 Force Majeure.** Strikes, lockouts, acts of God, severe shortages of labor or materials, acts of the public enemy, riot, war, fire or other delays beyond the reasonable control of Borrower.

**1.71 Funding Date.** The date on which the Initial Disbursement is made.

**1.72 Funding Loan.** The loan in the maximum amount of [\$21,884,000] **[CHECK]** made by Bank to Governmental Lender pursuant to the Funding Loan Agreement.

**1.73 Funding Loan Agreement.** The Funding Loan Agreement dated as of the Contract Date among the Governmental Lender, the Bank and Fiscal Agent in connection with the issuance of the Funding Loan Notes.

**1.74 Funding Loan Documents.** As defined in the Funding Loan Agreement.

**1.75 Funding Loan Notes.** As defined in the Funding Loan Agreement.

**1.76 General Partner(s).** Collectively, [\_\_\_\_\_] and [\_\_\_\_\_] **[CHECK]** (“Managing General Partner”).

**1.77 Governmental Authority.** Any federal, state or local governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public or private utility having authority over the Property or its utilization.

**1.78 Governmental Lender.** City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California.

**1.79 Governmental Requirement.** Any law, statute, order, ordinance, rule, regulation, permit or act of a Governmental Authority.

**1.80 Gross Operating Income.** The sum of any and all payments, fees, rentals, additional rentals (but specifically excluding any amounts received from tenant-based vouchers or other rent subsidies in excess of then maximum rents permitted under the Regulatory Agreements), expense reimbursements (including, without limitation, all reimbursements by tenants, subtenants, licensees and other users of the Property), income, interest, and other monies received directly or indirectly by or on behalf of Borrower from any Person with respect to Borrower's ownership, use, development or operation of the Property for the applicable determination period, including, without limitation, any leasing or licensing of the Property. Gross Operating Income shall be computed on a cash basis and shall include for each monthly statement all amounts actually received in such month whether or not such amounts are attributable to a charge arising in such month. Gross Operating Income shall not include security deposits, forfeitures or other non-recurring income and shall be adjusted to include the greater of actual vacancy or an assumed vacancy rate of five percent (5%).

**1.81 Guarantor.** Any Person who executes a Guaranty in connection with the Borrower Loan.

**1.82 Guaranty.** Bank's standard form Loan and Completion Guaranty and Indemnity Agreement entered into in connection with the Borrower Loan.

**1.83 HCD.** The Department of Housing and Community Development, a public agency of the State of California.

**1.84 HCD Deed of Trust.** The deed of trust to be executed by Borrower for the benefit of HCD, encumbering the Project and securing repayment of amounts owing under the HCD Loan, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.85 HCD Loan.** The [\$\_\_\_\_\_] **[CHECK]** loan to be made by HCD to Borrower in accordance with the terms of the HCD Loan Agreement.

**1.86 HCD Loan Agreement.** The Loan Agreement entered into by and between Borrower and HCD in connection with the making of the HCD Loan.

**1.87 HCD Loan Documents.** The HCD Loan Agreement, HCD Note, the HCD Deed of Trust, the HCD Restrictions, the HCD Subordination Agreement and all other documents and instruments evidencing, securing or pertaining to the HCD Loan.

**1.88 HCD Loan Junior Restrictions.** That certain Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing to be executed by Borrower for the benefit of HCD in connection with the HCD Loan, the lien of which shall be subordinate to the Deed of Trust.

**1.89 HCD Loan Note.** The [\$\_\_\_\_\_] **[CHECK]** promissory note to be executed by Borrower in favor of HCD evidencing the HCD Loan.

**1.90 HCD Loan Restrictions.** Collectively, the HCD Loan Junior Restrictions and the HCD Loan Senior Restrictions.

**1.91 HCD Loan Senior Restrictions.** That certain Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing to be executed by Borrower for the benefit of HCD in connection with the HCD Loan, the lien of which shall be senior to the Deed of Trust.

**1.92 HCD Loan Subordination Agreement.** A subordination agreement in the form and substance satisfactory to Bank, to be executed by HCD and Bank and acknowledged by Borrower pursuant to which HCD shall unconditionally subordinate the lien and effect of the HCD Loan Deed of Trust and HCD Loan Junior Restrictions to the lien and effect of the Deed of Trust.

**1.93 Hedge.** As defined in Section 7.45.1.

**1.94 Hedge Documents.** As defined in Section 7.45.1.

**1.95 Improvements.** A one hundred twenty (120) unit affordable apartment project, including two (2) property manager's units, and related appurtenances.

**1.96 Indemnified Parties.** Collectively Governmental Lender, Fiscal Agent and Bank and each of their respective officers, members governing members or partners, directors, employees, attorneys and agents, past, present and future.

**1.97 Indemnity Agreement.** Any Indemnity Agreement entered into in connection with the Borrower Loan.

**1.98 Initial Disbursement.** The initial Advance made by Governmental Lender to Borrower pursuant to this Agreement.

**1.99 Interest Reserve.** The portion of the Project Budget allocated for the payment of interest due under this Agreement.

**1.100 Leases.** All leases of any portion of the Property and all amendments, guaranties and subleases relating thereto.

**1.101 Liquid Assets.** Immediately available cash, bank deposits, accounts and mutual funds; obligations of or guaranteed by the U.S. government or an agency thereof; and stocks, bonds and other debt instruments regularly traded on the New York, American or NASDAQ stock exchange which can be readily converted into cash.

**1.102 Loan Fee.** [\$\_\_\_\_\_] [CHECK].

**1.103 Loan Party.** Any general partner, managing member, joint venturer, trustee or trustor of Borrower, as applicable and any Guarantor.

**1.104 Loan-to-Value Ratio.** The ratio of (i) then outstanding indebtedness in connection with the Borrower Loan to (ii) the Appraised Value of the Property.

**1.105 Margin.** As defined in the Borrower Notes.

**1.106 Maturity Date.** The applicable maturity date of the Borrower Notes. The Maturity Date of Borrower Note A-1 shall be subject to adjustment in accordance with any extension granted pursuant to Sections 2.5 or 2.6 below.

**1.107 Net Operating Income.** Gross Operating Income less Operating Expenses.

**1.108 NOI Account.** A Bank-controlled deposit account established with Bank in Borrower's name into which Borrower shall cause the Monthly NOI Deposits to be made pursuant to Section 5.8 below.

**1.109 Offsite Materials.** Materials to be incorporated into the Improvements or used in connection with the rehabilitation of the Improvements that are stored at a location other than the Real Property.

**1.110 Onsite Materials.** Materials to be incorporated into the Improvements or used in connection with the rehabilitation of the Improvements that are stored on the Real Property.

**1.111 Operating Expenses.** The following expenses incurred by Borrower in connection with the operation and maintenance of the Property to the extent that such expenses are reasonable in amount and customary for multifamily affordable housing properties of a type similar to the Property, as determined

by Bank in its reasonable discretion, including, without limitation, the following: (A) real property taxes and assessments imposed upon the Property unless a property tax “welfare” exemption pursuant to Section 214(g) or 236 of the R&T Code has been obtained, (B) premiums for insurance of the Property, including casualty and liability insurance, (C) deposits made into the Capital Improvement Reserve Account and any reserves, leasing commissions and tenant improvements, as determined by Bank in its business judgment, reasonably exercised, and (D) operating expenses actually incurred by Borrower in connection with the management (provided that management fees shall be adjusted to the greater of actual management fees or three percent (3.0%) of gross rents), operation, cleaning, leasing, maintenance and repair of the Property or any part thereof for the ninety (90) days preceding the date of determination. Operating Expenses shall be calculated on an accrual basis and shall not include any interest or principal payments due in respect of the Borrower Loan or any allowance for depreciation and similar noncash charges.

**1.112 Operating Statement.** A monthly, quarterly or annual statement that shows in detail the amounts and sources of Gross Operating Income, the amounts and nature of Operating Expenses, and Net Operating Income, in each case for the preceding calendar month, quarter or year. The Operating Statement shall be prepared in accordance with accounting practices and principles acceptable to Bank and consistently applied and in a form satisfactory to Bank.

**1.113 Outside Conversion Date.** September 1, 2023 (the “Initial Outside Conversion Date”), which date shall be subject to adjustment in accordance with any extension granted pursuant to Sections 2.5 or 2.6 below.

**1.114 Partnership Agreement.** That certain Amended and Restated Agreement of Limited Partnership of Borrower.

**1.115 Paydown Amount.** The amount by which (a) the current outstanding principal amount of the Borrower Notes, plus all accrued but unpaid interest thereon, exceeds (b) the lesser of (i) the current outstanding principal amount of Borrower Note A-2, (ii) the maximum outstanding principal balance of Borrower Note A-2 in order for the Property to satisfy the Debt Coverage Ratio pursuant to subsection (o) of Exhibit D (Conditions to Conversion) as of the Conversion Date, and (iii) the notional amount of the Hedge for Borrower Note A-2 as of the Conversion Date, which Paydown Amount shall be applied first towards all accrued and unpaid interest under the Borrower Loan, then towards the repayment of the principal balance of Borrower Note A-1, and then towards the repayment of the principal balance of Borrower Note A-2, and then to all other amounts due and owing under the Borrower Loan Documents and the Funding Loan Documents.

**1.116 Permanent Phase.** The period from the Conversion Date and ending on the Maturity Date.

**1.117 Permitted Liens.** Any easements, restrictions and other matters of record listed in a schedule of exceptions to coverage in the Title Policy as required by the Borrower Loan Documents.

**1.118 Person.** Any natural person or entity, including any corporation, partnership, joint venture, limited liability company, trust, trustee, unincorporated organization or Governmental Authority.

**1.119 Personal Property.** Any tangible or intangible personal property described in the Deed of Trust or Security Documents that is security for the Borrower Loan.

**1.120 Plans.** The final plans and specifications for rehabilitation of the Improvements (including any applicable general conditions), prepared by Architect and approved by Bank as required herein, and all amendments and modifications thereof made pursuant to Change Orders.

**1.121 Preliminary Reservation.** That certain Reservation Letter (Tax Exempt) dated September 16, 2020, issued by the Allocation Committee.

**1.122 Project Budget.** The cost itemization (set forth in Exhibit B-1 hereto) of the total amount needed by Borrower to rehabilitate the Improvements and to perform Borrower's other obligations under the Borrower Loan Documents, which itemization may be amended from time to time in accordance with this Agreement.

**1.123 Project Completion.** The date of completion of rehabilitation of the Project and issuance of all licenses and permits necessary for the occupancy and use of the Units such that the Project shall be considered "placed in service" for purposes of the provisions of Section 42 of the Code, which date of completion shall not be later than the Completion Date.

**1.124 Project Fund.** As defined in the Funding Loan Agreement.

**1.125 Property or Project.** The Real Property, the Improvements and the Personal Property.

**1.126 Qualified Allocation Plan.** The Qualified Allocation Plan adopted by the Allocation Committee from time to time in accordance with the provisions of Section 42(m) of the Code.

**1.127 R&T Code.** The California Revenue and Taxation Code, as amended from time to time thereto. Any reference to a particular provision of the R&T Code shall include any amendment of such provision.

**1.128 Real Property.** That certain real property described in Exhibit A hereto.

**1.129 Recorded Documents.** The Regulatory Agreements, the Deed of Trust, the Deed of Trust Assignment, the Seller Deed of Trust, the Seller Subordination Agreement, the City Subordination Agreement, the City Deed of Trust, the City Restrictions, the HCD Deed of Trust, the HCD Restrictions and the HCD Subordination Agreement.

**1.130 Regulatory Agreements.** All regulatory agreements and restrictions (including, without limitation, the Tax-Exempt Regulatory Agreement, the Extended Use Agreement, the City Restrictions and the HCD Restrictions) now or hereafter encumbering the Property and setting forth restrictions with respect to the leasing, maintenance and use of the Units.

**1.131 Rent Restrictions.** The occupancy and rent restrictions contained in the Regulatory Agreements.

**1.132 Second Extended Outside Conversion Date.** As defined in Section 2.6.

**1.133 Second Extension Term.** As defined in Section 2.6.

**1.134 Security Agreement.** The security agreement entered into by Borrower in favor of Governmental Lender and Bank, granting to Governmental Lender and Bank a security interest in the Seller Loan Account and the NOI Account.

**1.135 Security Documents.** Any agreements granting a security interest in collateral securing the Borrower Loan and/or any Hedge provided by Bank other than the Deed of Trust, including without limitation, Bank's standard form of assignments and consents to assignments of the Architect's Agreement, Construction Contract, if any, Plans, any property management agreement or asset management agreement, the Assignment of Tax Credits and Partnership Interests, the Assignment of Partnership Interest (GP), the Assignment of Hedge (if any) and the Security Agreement.

**1.136 Seller.** Fillmore Marketplace L.P., a California limited partnership.

**1.137 Seller Deed of Trust.** The deed of trust executed by Borrower for the benefit of Seller, encumbering the Project and securing repayment of amounts owing under the Seller Loan, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.138 Seller Loan.** The [\$\_\_\_\_\_] **[CHECK]** loan by Seller to Borrower, pursuant to the terms of the Seller Note, to cover, among other things, a portion of the acquisition costs of the Project.

**1.139 Seller Loan Account.** A Bank-controlled deposit account established with Bank in Borrower's name into which Borrower shall have caused [\$\_\_\_\_\_] of the Seller Loan to be deposited pursuant to Sections 5.1.1(i) and 5.7 below.

**1.140 Seller Loan Documents.** The Seller Note, the Seller Deed of Trust, the Seller Subordination Agreement and all other documents and instruments evidencing, securing or pertaining to the Seller Loan.

**1.141 Seller Note.** The [\$\_\_\_\_\_] **[CHECK]** promissory note executed by Borrower in favor of Seller evidencing the Seller Loan.

**1.142 Seller Subordination Agreement.** A subordination agreement in the form and substance satisfactory to Bank, executed by Seller and Bank and acknowledged by Borrower pursuant to which Seller shall unconditionally subordinate the lien and effect of the Seller Deed of Trust to the lien and effect of the Deed of Trust.

**1.143 Set Aside Letter.** Any letter or letters to any Governmental Authority or Surety whereby Bank agrees to allocate proceeds of the Borrower Loan for construction of Bonded Work.

**1.144 Single Change Order Limit.** \$250,000.

**1.145 Surety.** The bonding company that issues the bonds covering the Bonded Work.

**1.146 Tax Certificate.** As defined in the Funding Loan Agreement.

**1.147 Tax Counsel.** As defined in the Funding Loan Agreement.

**1.148 Tax Credit Allocation Documents.** The Tax Credit Application, the Preliminary Reservation, IRS Form 8609 to be hereafter executed by the Allocation Committee and all other documents heretofore and hereafter submitted to, and received by the Borrower from, the Allocation Committee, and all amendments, extensions and modifications thereto.

**1.149 Tax Credit Application.** The 2020 Low-Income Housing Tax Credit Application submitted to the Allocation Committee to apply for Tax Credits with respect to the Project.

**1.150 Tax Credit Investor.** [\_\_\_\_\_] **[CHECK]**, and its permitted successors and assigns.

**1.151 Tax Credits.** Low income housing tax credits to be allocated under Section 42 of the Code pursuant to the terms of the Tax Credit Allocation Documents.

**1.152 Tax-Exempt Regulatory Agreement.** The "Regulatory Agreement", as defined in the Funding Loan Agreement.

**1.153 Title Insurer.** First American Title Insurance Company.

**1.154 Title Policy.** An ALTA LP-10 Policy of Title Insurance or its equivalent acceptable to Bank, naming Governmental Lender and Bank as insured, with a liability limit of not less than the amount of the

Borrower Loan, issued by Title Insurer, insuring that the Deed of Trust constitutes a valid first lien on the Real Property and Improvements, with only such exceptions from its coverage as shall have been approved in writing by Bank, with such reinsurance or coinsurance agreements or endorsements to such policy as Bank may require.

**1.155 Transfer.** Any sale, lease or other transfer of any interest to any other Person.

**1.156 Unit(s).** The one hundred twenty (120) apartment units (including two (2) manager's units) constituting the Improvements.

## **2. BORROWER LOAN.**

**2.1 Purpose.** The purpose of the Borrower Loan is to finance the acquisition of the Real Property and rehabilitation of the Improvements and other costs related thereto and to provide permanent financing for the Project.

**2.2 Loan Terms and Conditions.** Subject to the terms and conditions contained in this Agreement, as may be modified by the provisions of Exhibit C and Section 3.3 of the Funding Loan Agreement, Governmental Lender agrees to make the Borrower Loan to Borrower. The repayment of all amounts due in connection with the Borrower Loan shall be secured by, among other things, the Deed of Trust, the Security Documents and such other collateral as may be required by Bank. Interest shall accrue and principal and interest shall be payable in accordance with the terms of this Agreement.

**2.3 Loan Fee.** Borrower shall pay the Loan Fee to Bank in immediately available funds on or before the Closing Date. The Loan Fee shall be nonrefundable.

**2.4 Full Payment and Reconveyance.** Upon Governmental Lender's and Bank's receipt, as applicable, of all sums owing and outstanding under the Borrower Loan Documents and under any other note or notes or any other obligation secured by the Deed of Trust, Bank shall issue a full reconveyance of the Property and Improvements from the lien of the Deed of Trust; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Bank shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Borrower Loan Documents and the Funding Loan Documents; and (b) Bank shall have received a written release satisfactory to Bank of any Set Aside Letter, letter of credit or other form of undertaking that Bank has issued to any Surety, Governmental Authority or any other party in connection with the Borrower Loan and/or the Property. As of the earlier of the last day of disbursement of the Funding Loan under Section 3.4(d) of the Funding Loan Agreement, or date of repayment in full of the Borrower Loan, Governmental Lender's obligation to make further disbursements under the Borrower Loan shall terminate as to any portion of the Borrower Loan undisbursed, and any commitment of Governmental Lender to lend any undisbursed portion of the Borrower Loan shall be cancelled.

**2.5 First Extension Term.** Borrower shall have the option to: (i) extend the Initial Outside Conversion Date for an additional three (3) months ("First Extension Term"), to and including December 1, 2023 ("First Extended Outside Conversion Date"), and (ii) extend the Maturity Date of Borrower Note A-1 for the same additional corresponding three (3) month period to and including December 1, 2023, upon satisfaction of all of the following conditions, as determined by Bank:

**(a)** Borrower shall provide Bank with Borrower's written request to exercise the First Extension Term not less than sixty (60) days prior to the Initial Outside Conversion Date.

**(b)** At the time of Bank's receipt of Borrower's written request to extend the term of the Loan, and as of the Initial Outside Conversion Date, no Event of Default shall have occurred and be continuing.

(c) There shall have been no substantial deterioration in the financial condition of Borrower or any Loan Party, as determined by Bank in Bank's sole discretion.

(d) Borrower and any Loan Party shall have executed such documents as Bank may require in connection with such extension, including any amendments to the Borrower Loan Documents.

(e) Neither Borrower nor any Loan Party shall be in default under any promissory note, deed of trust, security agreement, guaranty or other agreement between Bank and any such party, and no event shall have occurred which would constitute a default or event of default thereunder.

(f) Borrower shall have paid to Bank a loan extension fee equal to \$5,000.

(g) Borrower shall have provided Bank with evidence that the Improvements shall be substantially completed in accordance with the Plans, as determined by Bank in its sole discretion, as of the Completion Date.

(h) Bank shall have the option, in its sole discretion, to re-balance the Interest Reserve to assure that there are sufficient funds in the Interest Reserve to pay the interest required under the terms of the Borrower Notes during the First Extension Term. In the event the Bank determines that the funds in the Interest Reserve are insufficient, Borrower shall pay into the Borrower's Funds Account such amount as is necessary, as determined by Bank in its sole discretion, to provide adequate funds to pay, at a minimum, the interest required under the terms of the Borrower Notes during the First Extension Term.

(i) Intentionally Omitted.

(j) From and after the Initial Outside Conversion Date, the interest payable under the Borrower Notes during the First Extension Term shall continue to accrue at the rate or rates specified in the Borrower Notes and monthly payments of interest only shall continue to be payable as specified in the Borrower Notes.

(k) Borrower shall pay all costs and expenses incurred by Bank in connection with exercise of the First Extension Term, including without limitation, extension fees, documentation and/or recording fees, if any, and the cost of any title endorsements required by Bank.

**2.6 Second Extension Term.** If Borrower shall have exercised Borrower's option to extend the Initial Outside Conversion Date and the Initial Outside Conversion Date shall have been extended in accordance with this Agreement, Borrower shall have the option to: (i) further extend the Outside Conversion Date for an additional three (3) months ("Second Extension Term") to and including March 1, 2024 ("Second Extended Outside Conversion Date"), and (ii) further extend the Maturity Date of Borrower Note A-1 for the same additional corresponding three (3) month period to and including March 1, 2024, upon satisfaction of all the following conditions, as determined by Bank:

(a) Borrower shall provide Bank with Borrower's written request to exercise the Second Extension Term not less than sixty (60) days prior to the First Extended Outside Conversion Date.

(b) At the time of Bank's receipt of Borrower's written request to extend the term of the Borrower Loan, and as of the First Extended Outside Conversion Date, no Event of Default shall have occurred and be continuing.

(c) There shall have been no substantial deterioration in the financial condition of Borrower or any Loan Party, as determined by Bank in Bank's sole discretion.



(d) Borrower shall have executed such documents as Bank may require in connection with such extension, including any amendments to the Borrower Loan Documents.

(e) Neither Borrower nor any Loan Party shall be in default under any promissory note, deed of trust, security agreement, guaranty or other agreement between Bank and any such party, and no event shall have occurred which would constitute a default or event of default thereunder.

(f) Borrower shall have paid to Bank a loan extension fee equal to \$5,000.

(g) Borrower shall have provided Bank with evidence that the Improvements shall be substantially completed in accordance with the Plans, as determined by Bank in its sole discretion, as of the Completion Date.

(h) Bank shall have the option, in its sole discretion, to re-balance the Interest Reserve to assure that there are sufficient funds in the Interest Reserve to pay the interest required under the terms of the Borrower Notes during the Second Extension Term. In the event the Bank determines that the funds in the Interest Reserve are insufficient, Borrower shall pay into the Borrower's Funds Account such amount as is necessary, as determined by Bank in its sole discretion, to provide adequate funds to pay, at a minimum, the interest required under the terms of the Borrower Notes during the Second Extension Term.

(i) Intentionally Omitted.

(j) From and after the First Extended Outside Conversion Date, the interest payable under the Borrower Notes during the Second Extension Term shall continue to accrue at the rate or rates specified in the Borrower Notes and monthly payments of interest only shall continue to be payable as specified in the Borrower Notes.

(k) Borrower shall pay all costs and expenses incurred by Bank in connection with the exercise of the Second Extension Term, including without limitation, extension fees, documentation and/or recording fees, if any, and the cost of any title endorsements required by Bank.

**2.7 Assignment of Borrower Loan Documents to Bank.** Borrower acknowledges that the Governmental Lender has made an assignment to the Bank of all right, title and interest of the Governmental Lender in this Borrower Loan Agreement (except for the Reserved Rights, as defined in the Funding Loan Agreement), the Borrower Notes, the Deed of Trust and the other Borrower Loan Documents and has appointed the Bank as its agent to collect payments from the Borrower with respect to the Borrower Loan and to take all actions on behalf of Governmental Lender with respect to the Borrower Loan and the Borrower Loan Documents. Borrower hereby consents to all such assignments and the appointment of Bank as agent for the Governmental Lender.

### **3. PAYMENTS; CONVERSION.**

**3.1 Payments.** To induce Governmental Lender to make the Borrower Loan, Borrower shall pay to Bank (as agent of the Governmental Lender) all amounts, including principal, interest and premium (if any) that become due and payable on the Borrower Notes, as and when such amounts become due and payable under the Borrower Notes. Without limitation on the foregoing, Borrower shall also pay to Bank when due all other amounts described in this Agreement, as and when due and payable under this Agreement.

#### **3.2 Conversion; Termination.**

**3.2.1** Not later than 30 days prior to the earlier to occur of the proposed Conversion Date or the Outside Conversion Date, Borrower shall deliver the Conversion Election Notice to Bank. The Conversion Election Notice shall be accompanied by (a) a written certification by Borrower to Bank that all

of the Conditions to Conversion have been fully satisfied or with respect to Exhibit D items (b), (i), (o) and (q) will be fully satisfied concurrently with Conversion; (b) a rent roll covering the Property for each of the three full calendar months immediately preceding the date of the Conversion Election Notice, certified by Borrower as true, correct and complete; and (c) operating statements for the Property for each of such three calendar months, in the form required by Bank, and certified by Borrower to be true, correct and complete.

**3.2.2** The Conditions to Conversion specified in Exhibit D shall be applicable to the Conversion. Bank shall have the right to waive any Condition to Conversion set forth in Exhibit D in Bank's sole and absolute discretion.

**3.2.3** If, based upon the information delivered pursuant to Section 3.2.1 and such other information as Bank may reasonably require as evidence of satisfaction of the Conditions to Conversion, Bank determines in its reasonable discretion that the Conditions to Conversion have been or will be fully satisfied or waived in writing by Bank, Bank shall deliver the Conversion Notice, which Conversion Notice shall state the Conversion Date, and a copy of Schedule "1" to be attached to Borrower Note A-2 setting forth the monthly installments of principal required to be paid by Borrower under Borrower Note A-2.

**3.2.4** Upon Conversion (and so long as all Conditions to Conversion are satisfied or waived in writing by Bank) the following documents shall be deemed automatically terminated and shall have no further force or effect without any further action by any Loan Party: (i) the Guaranty (but specifically excluding the Indemnity Agreement); (ii) the Assignment of Tax Credits and Partnership Interests, and (iii) the Assignment of Partnership Interest (GP).

**3.2.5** If the Conditions to Conversion have not been fully satisfied or waived in writing by Bank prior to the Outside Conversion Date, Borrower shall pay to Bank, on the Outside Conversion Date, the entire outstanding principal balance of the Borrower Loan, together with all accrued and unpaid interest thereon and other accrued and unpaid fees, costs and expenses owing under the Borrower Loan Documents and the Funding Loan Documents.

**3.3 Maturity Date.** All unpaid principal and interest on the Borrower Loan and other amounts due under the Borrower Loan Documents and the Funding Loan Documents shall be due and payable in full on the Maturity Date, as such date may be extended or accelerated.

**3.4 Additional Fee Payment Obligations.** All payments to fund taxes, insurance or any other escrow or reserve required to be established, funded or created pursuant to any Borrower Loan Document or Funding Loan Document, shall be due and payable by Borrower to Bank the date monthly payments are due pursuant to Borrower Note A-2 commencing in the month following the month in which the Conversion Date occurs in accordance with the applicable Borrower Loan Document or Funding Loan Document. Borrower shall pay to Fiscal Agent Fiscal Agent's Fees (as defined in the Funding Loan Agreement) in accordance with the terms of the Funding Loan Agreement.

#### **4. CONDITIONS PRECEDENT.**

**4.1 Conditions to Closing of the Borrower Loan.** Prior to the Closing Date, Bank shall have received all of the following documents, instruments and other items (each of which, in the case of documents or instruments, shall be fully and properly executed and, where required by Bank, acknowledged by all parties thereto), each in form and content acceptable to Bank:

**4.1.1** The original Borrower Loan Documents.

**4.1.2** Copies of organizational documents of Borrower and all Loan Parties, duly filed and/or recorded in the appropriate jurisdiction and certified as required by Bank, including without limitation, and as applicable, (a) articles of organization and operating agreements, (b) certificates of limited partnership, statements of partnership and partnership agreements, (c) statements of joint venture and joint

venture agreements, (d) articles of incorporation, (e) trust agreements, and (f) any amendments to any of the foregoing.

**4.1.3** Evidence that the insurance required by the Agreement to Furnish Insurance is in full force and effect.

**4.1.4** All Borrower's Funds required under this Agreement.

**4.1.5** Copies of the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, and any other agreements that Bank determines are material to rehabilitation of the Improvements, all certified as required by Bank.

**4.1.6** Copies of (1) the building permits and any other authorizations required from any Governmental Authority in connection with rehabilitation of the Improvements and (2) for all required permits and authorizations not delivered on or prior to the Closing Date, permit ready letters from any Governmental Authority required in connection with rehabilitation of the Improvements which provide that the only condition to issuance of such permits is payment of the applicable fees.

**4.1.7** If required by Bank, a current ALTA survey of the Real Property, including dimensions and delineation and location of all easements thereon, certified to and satisfactory to Bank and Title Insurer.

**4.1.8** If required by Bank, letters from local utility companies and any Governmental Authority stating that electric, gas, sewer, water, cable and telephone facilities are or will be available to the Real Property upon completion of the Improvements.

**4.1.9** Written results of such due diligence investigations with respect to Borrower, any Loan Party and the Property as Bank deems necessary, including without limitation, environmental reviews, engineering inspections, seismic studies and financial analysis.

**4.1.10** An opinion of Borrower's counsel as to (a) the proper formation, valid existence and good standing of Borrower and all Loan Parties, (b) the due authorization and execution of all Borrower Loan Documents and any Hedge Documents with Bank by Borrower and all Loan Parties, (c) whether all necessary consents have been obtained with respect to the Borrower Loan and any Hedge Documents with Bank, (d) the absence of any threatened or pending actions, suits or proceedings against or affecting the Property, Borrower or any Loan Party, (e) the absence of the violation of any agreements to which Borrower or any Loan Party is bound, and (f) such other matters as Bank may determine to be necessary or appropriate.

**4.1.11** Such evidence as Bank may reasonably require to confirm the accuracy of the representations and warranties set forth in Section 6.29 of this Agreement.

**4.1.12** Copies of the Seller Loan Documents, the City Loan Documents and the HCD Loan Documents, each in a form acceptable to Bank.

**4.1.13** Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.45, with respect to the Borrower Note A-2 in an amount not less than the entire principal amount of Borrower Note A-2, which provides for a fixed rate of interest on Borrower Note A-2 not to exceed (or otherwise protects against the interest rate on Borrower Note A-2 exceeding) [\_\_\_%] **[CHECK]** (including the Margin applicable to Borrower Note A-2 during the Permanent Phase), for the period commencing on the Initial Outside Conversion Date and ending on the Maturity Date applicable to Borrower Note A-2.

**4.1.14** All costs, charges and expenses incurred in connection with the Borrower Loan or payable in connection with this Agreement as of the Closing Date, including, without limitation, the Loan

Fee, fees and expenses of the Fiscal Agent, service charges, title charges, tax and lien service charges, recording fees, escrow fees, appraisal fees, legal fees, insurance premiums, any amounts required to pay existing encumbrances then due affecting the Property and any amounts required to complete the closing of the acquisition of the Real Property, shall have been paid by Borrower.

**4.1.15** If the Property contains existing Improvements, Borrower shall have provided to Bank a copy of any inspection report concerning wooden exterior elevated elements with load bearing components, including any inspection reports prepared pursuant to California Health and Safety Code.

**4.1.16** Such other documentation, certifications, opinions and information as may be reasonably required by Governmental Lender or Bank.

**4.2 Conditions to Issuance of the Funding Loan Notes.** Governmental Lender's obligation to execute the Funding Loan Notes, and Governmental Lender's and Bank's obligation to enter into this Agreement, the other Borrower Loan Documents and the Funding Loan Documents, and to make the Initial Disbursement, are subject to the satisfaction, or waiver by Governmental Lender or Bank, as applicable, each of the conditions in Section 4.1 and of all of the following conditions precedent:

**4.2.1** Governmental Lender and Bank shall have received fully executed originals of each of the Borrower Loan Documents and the Funding Loan Documents.

**4.2.2** The Tax-Exempt Regulatory Agreement shall have been duly executed, acknowledged and delivered by Borrower to Governmental Lender and Bank.

**4.2.3** Each of the Recorded Documents shall have been recorded in the Official Records of the county in which the Real Property is located.

**4.2.4** The Financing Statements have been filed with the Secretary of State of California, and Bank shall have received a certificate of the Secretary of State showing such Financing Statements to be subject to no prior filings (other than filings perfecting Permitted Liens) except as otherwise agreed to by Bank.

**4.2.5** Title Insurer shall have committed to deliver to Bank the Title Policy.

**4.2.6** Bank and Governmental Lender shall have received and approved an executed original of each of the following opinions, in each case addressed to each of Governmental Lender and Bank and in each case in form and substance approved by Governmental Lender and Bank: (a) the opinion of counsel to Borrower and the other Loan Parties, opining as to the due formation, qualification and good standing of Borrower and the other Loan Parties, the due authorization by Borrower and the Loan Parties of the execution, delivery and performance of the Borrower Loan Documents, and the enforceability of the Borrower Loan Documents, and covering such other matters as Bank may require; and (b) an opinion of Tax Counsel, opining as to the due organization and valid existence of the Governmental Lender, due execution and delivery by the Governmental Lender of the Funding Loan Agreement, and this Agreement, the enforceability of the Funding Loan Agreement and this Agreement, and the exclusion of interest on the Funding Loan Notes from gross income for federal income tax purposes.

**4.2.7** Bank shall have received and approved such Financial Statements and other financial information as it may require regarding the financial condition of Borrower, the Loan Parties and/or the Property.

**4.2.8** Bank shall have received and approved a detailed sources and uses statement showing (i) all costs and expenses of issuance of the Funding Loan Notes, and (ii) all sources for payment of such costs and expenses.

**4.2.9** To the extent not funded from the Initial Disbursement, Borrower shall have paid (or will pay concurrently with issuance of the Funding Loan Notes) to Governmental Lender and Bank, as applicable, in immediately available good funds (a) all costs and expenses incurred by Governmental Lender and Bank in connection with the Funding Loan, the making of the Borrower Loan and the negotiation, preparation and closing of the Borrower Loan Documents and Funding Loan Documents, (b) the Tax Counsel fees and expenses due and payable, (c) all fees to Governmental Lender then due and payable, and (d) the initial Fiscal Agent's Fees (as defined in the Funding Loan Agreement).

**4.2.10** Borrower shall have delivered to Bank, and Bank shall have approved such information, and/or documentation as Bank may require to evidence that paragraph (1) of Section 42(h) of the Code will not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

## **5. DISBURSEMENTS.**

### **5.1 Initial Disbursement.**

**5.1.1** Prior to the Initial Disbursement, the following conditions shall have been satisfied in addition to the conditions set forth in Sections 4.1 and 4.2, as determined by Bank:

**(a)** Borrower and all Loan Parties shall have performed to Bank's satisfaction all covenants required to be performed under this Agreement, the other Borrower Loan Documents and the Funding Loan Documents on or before the Funding Date.

**(b)** No change shall have occurred which could have a material adverse effect on Borrower, any Loan Party, the Property or Bank's right or ability to receive payment in full of the Borrower Loan, as determined by Bank in its sole discretion.

**(c)** No Event of Default shall exist.

**(d)** The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

**(e)** Bank shall have approved in its sole discretion, the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, and any other agreements that Bank determines are material to the rehabilitation of the Improvements.

**(f)** Bank shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Bank.

**(g)** If required by Bank, Bank shall have received a list of the names and addresses of all suppliers, laborers and subcontractors with whom agreements have been made with Contractor and/or Borrower to deliver materials and/or perform work on the Improvements.

**(h)** Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least [\$2,302,236] **[CHECK]**.

**(i)** Such evidence as Bank may require evidencing that (i) the entire amount of the City Loan and the HCD Loan shall have been disbursed by the City and HCD to or for the account of Borrower for Project costs in accordance with the Project Budget, and (ii) [\$\_\_\_\_\_] **[CHECK]** of the Seller Loan shall have been disbursed by Seller to or for the account of Borrower and applied towards the costs of acquiring the Property, and (iii) the remaining [\$\_\_\_\_\_] **[CHECK]** of the Seller Loan shall have been disbursed by Seller to or for the account of Borrower and deposited into the Seller Loan Account.

**5.1.2** Upon satisfaction of the conditions contained in Sections 4.1, 4.2 and 5.1.1, Bank, on behalf of Governmental Lender, shall make an Advance in accordance with the Project Budget and the Disbursement Schedule the amounts to be paid by Bank pursuant to the settlement statement approved by Bank.

## **5.2 Subsequent Disbursements.**

**5.2.1** Prior to making any Advances after the Initial Disbursement, except for the final Advance, the following additional conditions shall have been satisfied, as determined by Bank:

(a) All specific requirements for the disbursement set forth in the Disbursement Schedule shall have been satisfied.

(b) No Event of Default shall exist.

(c) The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct in all material respects on and as of the date of the disbursement with the same effect as if made on such date.

(d) The Improvements shall not have been damaged by fire or other casualty unless Bank has determined that Bank will receive insurance proceeds sufficient in Bank's judgment to effect the satisfactory restoration of the Improvements and permit Project Completion prior to the Completion Date.

(e) If required by Bank, Bank shall have received confirmation to its satisfaction that (A) to date, the Improvements have been rehabilitated substantially in accordance with the Plans and the Construction Contract (if any), and (B) the present state of rehabilitation of the Improvements will, barring then unforeseen and unknown delays, permit Project Completion on or before the Completion Date.

(f) If Bank has determined that the undisbursed proceeds of the Borrower Loan and Borrower's Funds (if any), are insufficient to pay all costs to complete rehabilitation of the Improvements (and all other costs included within the Project Budget), Borrower shall have deposited into the Borrower's Funds Account cash in the amount of such shortfall as provided in Section 7.2.

(g) If required by Bank, Title Insurer shall have issued its continuation endorsement to the Title Policy indicating that since the last preceding disbursement, there: (1) has been no change in the condition of title to the Property; and (2) are no intervening liens that may now or hereafter take priority over the disbursement to be made.

(h) Bank shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Bank.

(i) All amounts deposited into the Borrower's Funds Account shall have been withdrawn by Borrower to cover Project costs in accordance with the terms and conditions of this Agreement.

(j) Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

**5.2.2** Upon satisfaction of the conditions contained in Sections 5.2.1 and 5.4 (as applicable), no more than two (2) times per calendar month following commencement of rehabilitation of the Improvements, Contractor shall submit to Borrower a Draw Request showing the estimated cost of labor performed on and materials incorporated into the Improvements, a pro-rata portion of Contractor's profit

and that pro-rata portion of overhead of Contractor attributable to the rehabilitation of the Improvements. The original of such Draw Request, certified true and correct by Contractor and approved by Borrower, shall be submitted to Bank for payment. Upon verification of the accuracy of the Draw Request by Bank by inspection of the Real Property and Improvements (if required by Bank), Governmental Lender will cause Bank, as agent, to disburse the amount of the respective approved Draw Request in accordance with the Disbursement Schedule (i) directly to Borrower or, upon the occurrence and during the continuance of an Event of Default, directly to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the rehabilitation of the Improvements (at Bank's option as to whom and in what amounts payments are to be made), or (ii) if specifically required by Bank, through a fund control service acceptable to Bank under a fund control agreement in form and content acceptable to Bank.

### **5.3 Final Disbursement.**

**5.3.1** Prior to making the final Advance, the conditions set forth in Sections 5.1, 5.2 and 5.4 (as applicable) and the following conditions shall have been satisfied, as determined by Bank:

**(a)** Bank shall have received confirmation to its satisfaction that the Improvements have been completed substantially in accordance with the Plans and the Construction Contract (if any).

**(b)** If required by Bank, Bank shall have received a copy of the temporary certificate of occupancy (or its equivalent as determined by Bank) issued by the appropriate Governmental Authority.

**(c)** Bank shall have received evidence that Borrower has recorded a notice of completion (or its equivalent as determined by Bank) with respect to the Improvements.

**(d)** Bank shall have received (A) such endorsements to the Title Policy as Bank may require which shall insure that the Improvements have been completed free of all mechanic's and materialmen's liens or claims thereof, or (B) such additional title policies with endorsements as Bank may require, with a liability limit of not less than the principal amount of the Borrower Loan, issued by Title Insurer, with coverage and in form satisfactory to Bank, insuring Governmental Lender's and Bank's interest under the Deed of Trust as a first lien on the Property, excepting only such items as shall have been approved in writing by Bank. Bank may waive the conditions set forth in this Section 5.3.1(d) in its sole discretion.

**(e)** If requested by Bank, (i) Tax Credit Investor shall have executed and delivered to Bank an estoppel certificate in form and substance reasonably acceptable to the Bank, which shall contain such certifications as Bank shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, (ii) the City shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the City Loan Documents, (iii) Seller shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the Seller Loan Documents, and (iv) HCD shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the HCD Loan Documents.

**(f)** Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least [\$11,418,451] **[CHECK]** in the aggregate.

**5.3.2** The final disbursement shall consist of the payment of any monies retained from progress payments or disbursements as set forth in this Agreement. Subject to the provisions of this

Agreement, the final disbursement shall be made only after Borrower has satisfied the conditions of Sections 5.3.1 and 5.4 (as applicable).

**5.4 Additional Conditions to Advances.** Bank shall have the right to condition any Advance upon Bank's receipt and approval of the following, each in form and content acceptable to Bank:

**5.4.1** The Draw Request.

**5.4.2** Bills, invoices, documents of title, vouchers, statements, receipts and any other documents evidencing the total amount expended, incurred or due for any requested line item shown in the Project Budget.

**5.4.3** Evidence of Borrower's use of a lien release, joint check or voucher system acceptable to Bank for payments or disbursements to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the rehabilitation of the Improvements.

**5.4.4** Architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of rehabilitation that has been completed and its conformance to the Plans and any Governmental Requirement based upon such architect's, inspector's and/or engineer's periodic physical inspections of the Real Property and Improvements.

**5.4.5** Waivers and releases of any mechanic's lien, stop notice claim, equitable lien claim or other lien claim rights.

**5.4.6** Any other documents, requirements, evidence or information that Bank may request under any provision of the Borrower Loan Documents.

**5.4.7** Evidence that any goods, materials, supplies, fixtures or other work in progress for which disbursement is requested have been incorporated into the Improvements.

**5.4.8** In the event any Draw Request includes the cost of Offsite Materials, such Draw Request shall include each of the following: (a) evidence that the Offsite Materials have been purchased by Borrower, have been segregated from other materials in the facility where they are stored and have been appropriately marked to indicate Borrower's ownership thereof and Bank's security interest therein; (b) evidence that the Offsite Materials are insured as required by this Agreement; and (c) at Bank's request, a security agreement, financing statement, acknowledgment, and/or subordination agreement in form and content satisfactory to Bank executed by the supplier of the Offsite Materials, and/or such other Persons as Bank determines may have an interest in or claim to the Offsite Materials, together with such other additional documentation and evidence as Bank may reasonably require to assure itself that it has a perfected first priority lien on the Offsite Materials.

**5.4.9** In the event any Draw Request includes the cost of Onsite Materials, such Draw Request shall include each of the following: (a) evidence that the Onsite Materials have been purchased by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Real Property for which adequate security is provided against theft and vandalism.

## **5.5 Disbursement Limits.**

**5.5.1** Borrower hereby represents to Bank that, as of the date of this Agreement, the Project Budget represents the total amount needed by Borrower to rehabilitate the Improvements and to perform Borrower's obligations under the Borrower Loan Documents and Funding Loan Documents. Bank shall not be required to make any Advance for any Construction Costs or any other purpose that is not set forth in the Project Budget nor shall Bank be required to make any Advance for any line item in the Project



Budget in an amount that when added to the sum of all prior Advances for that line item would exceed the sum allocated in the Project Budget for that line item.

**5.5.2** Bank reserves and shall have the right to make Advances that are allocated to any line items in the Project Budget for such other purposes or in such different proportions as Bank may, in its sole discretion, deem necessary or advisable. Borrower shall have no right whatsoever to reallocate Advances from one line item in the Project Budget to another or otherwise amend the Project Budget without the prior consent of Bank; provided, however, that if Borrower establishes to the reasonable satisfaction of Bank that a cost savings has been effected in a line item, the amount of such savings shall be transferred to the “hard cost” or “soft cost” contingency line item (as appropriate in view of characterization of the line item in question). Amounts allocated to “hard costs” and “soft costs” contingency line items shall be available for payment of cost overruns in “hard costs” and “soft costs” of the Project, respectively, subject to the prior approval of Bank, which approval shall not be unreasonably withheld but may be conditioned upon Bank’s determination that the remaining balance in the contingency line items is likely to be sufficient to cover potential cost overruns in the remaining line items for which work has not been completed and the final payment has not been made.

**5.5.3** All Advances shall be made in accordance with the applicable provisions of the Project Budget and the Disbursement Schedule. All funds disbursed to Borrower shall be received by Borrower in trust and Borrower agrees that such funds shall be used only for the payment of those items contemplated by the particular Advance.

**5.5.4** Bank shall not be required to disburse an aggregate amount of the proceeds of the Borrower Loan for labor furnished to and materials incorporated into the Improvements during any stage of rehabilitation that exceeds the lesser of (a) the value of such labor and materials, and (b) the amount allocated to that stage of rehabilitation in the Project Budget. In any event, Bank shall not be required to disburse any amount that, in Bank’s opinion, will reduce that portion of the undisbursed proceeds of the Borrower Loan designated for completion of the Improvements below the amount needed to pay for the labor and materials necessary to complete the Improvements.

**5.5.5** All Advances shall be first made from Borrower Note A-2 until fully disbursed, and then from Borrower Note A-1.

**5.5.6** Notwithstanding anything to the contrary contained herein, disbursements of the Borrower Loan shall be made from the Project Fund held by the Fiscal Agent pursuant to the Funding Loan Agreement.

**5.6 Disbursement into Project Fund.** Notwithstanding anything to the contrary contained in the Funding Loan Documents or the Borrower Loan Documents, if any portion of the Funding Loan has not been fully disbursed by December 1, 2024 and Conversion has not yet occurred, in the event the Bank determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on any undisbursed portions of the Funding Loan (the “Remaining Undisbursed Funding Loan”) not being excluded from gross income for federal income tax purposes, or otherwise determines that it is in the Bank’s best interest to fully fund the Funding Loan in order to assure that interest on the Funding Loan Notes will remain excluded from gross income for federal income tax purposes (each a “Contingency Event”), then Bank may, in its discretion, upon five (5) days’ written notice to Borrower, disburse all or any portion of the Remaining Undisbursed Funding Loan to the Fiscal Agent for deposit into the Project Fund established pursuant to the Funding Loan Agreement, at which time the proceeds so advanced shall constitute (i) an advance of the applicable portion of the Funding Loan to the Governmental Lender, and (ii) an advance of the applicable portion of the Borrower Loan by Governmental Lender to the Borrower, unless Bank receives an opinion of Tax Counsel to the effect that the draw of Funding Loan proceeds after the Contingency Event will not adversely affect the exclusion of interest on the Funding Loan Notes from gross income for federal income tax purposes. The portion of the Borrower Loan disbursed into the Project Fund pursuant to this Section shall be deemed outstanding as of the date advanced into the Project Fund and will immediately commence to accrue interest as provided in the Borrower Notes. All funds disbursed into the Project Fund shall continue to be disbursed by Bank to pay

Project costs pursuant to the provisions of the Funding Loan Agreement, this Section 5 and the Disbursement Schedule as if they were Advances of the Borrower Loan.

**5.7 Disbursement of Funds from Seller Loan Account.** On or prior to the closing of the Borrower Loan and as a condition precedent thereto, Borrower shall (i) establish with Bank the Seller Loan Account and execute the Security Agreement, and (ii) deposit into the Seller Loan Account the amount of [ \$ \_\_\_\_\_ ] [CHECK]. Upon such time as Bank receives evidence reasonably acceptable to Bank that more than fifty percent (50%) of the aggregate basis of the Project has been financed by the proceeds of the Borrower Loan, all amounts on deposit in the Seller Loan Account shall be applied to repay the Borrower Loan.

**5.8 Disbursement of Funds from NOI Account.**

**5.8.1** On or prior to the closing of the Borrower Loan and as a condition precedent thereto, Borrower shall establish with Bank the NOI Account and execute the Security Agreement. Commencing on the first (1<sup>st</sup>) day of the first month immediately following the Closing Date, and continuing on the first day of every month thereafter, Borrower shall deposit or cause to be deposited into the NOI Account an amount equal to no less than [ \$ \_\_\_\_\_ ] [CHECK] each month.

**5.8.2** Subject to Bank's approval (which may be granted or withheld in Bank's sole and absolute discretion), Borrower shall be entitled to withdraw funds from the NOI Account from time to time (but no more often than once every thirty (30) days and in an amount of no less than \$1,000 for each such withdrawal) to cover Project costs, but only upon ten (10) days prior written notice from Borrower to Bank requesting to withdraw such funds and only so long as no Event of Default exists and no event has occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default. Said written request shall set forth the amount of funds Borrower wishes to withdraw from the NOI Account, shall set forth with specificity those Project costs for which the funds are to be used and shall be accompanied by copies of invoices or other evidence satisfactory to Bank confirming the cost of such Project costs. Bank may also condition the withdrawal of funds from the NOI Account upon delivery by Borrower of such contractor's affidavits, owner's sworn statements, partial and final waivers of lien and other additional documentation Bank may require to ensure that any work performed in connection with the applicable Project costs have been completed free and clear of any claims of lien, and in a good and workmanlike manner and otherwise in accordance with all applicable legal requirements. The disbursement of funds withdrawn from the NOI Account may be made, in Bank's discretion, either directly to the parties entitled thereto or to Borrower to pay the same. If such funds are disbursed directly to Borrower, Borrower shall provide Bank with evidence of the payment of the cost of the Project costs within thirty (30) days after Bank's written request therefor following the date such funds are withdrawn from the NOI Account.

**5.8.3** In the event the Bank determines that the funds in the Interest Reserve are insufficient to pay the interest required under the terms of the Borrower Notes during the Construction Phase, Bank shall have the option, in its sole discretion, to use funds deposited in the NOI Account to re-balance the Interest Reserve to assure that there are sufficient funds in the Interest Reserve to pay the interest required under the terms of the Borrower Notes.

**5.8.4** On the Conversion Date, all amounts remaining on deposit in the NOI Account shall be applied to repay the Borrower Loan.

**6. REPRESENTATIONS AND WARRANTIES OF BORROWER.** Borrower makes the following representations and warranties for the benefit of Governmental Lender and Bank, each of which is material and is relied upon by Governmental Lender in making the Borrower Loan and Governmental Lender and Bank in executing this Agreement. Each of the following representations and warranties shall be true and accurate in all material respects as of the Contract Date, the Closing Date and upon disbursement of the Initial Disbursement and each Advance. Borrower agrees that such representations and warranties shall survive and continue until full and final payment of all sums owed under the Borrower Loan Documents.

**6.1 Formation/Authority.** Borrower has complied with all laws and regulations concerning Borrower's organization, existence and the transaction of Borrower's business, and is in good standing in each state in which Borrower conducts business. Borrower is authorized to execute, deliver and perform Borrower's obligations under each of the Borrower Loan Documents and the Funding Loan Documents, and Borrower is authorized to rehabilitate the Improvements and to own and operate the Property. The officers of the Borrower executing this Agreement and the Borrower Loan Documents are duly and properly in office and fully authorized to execute the same. This Agreement and the Borrower Loan Documents have been duly authorized, executed and delivered by the Borrower.

**6.2 Enforceability.** The Borrower Loan Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Loan Documents such that they are the valid and binding obligations of the Borrower, enforceable in accordance with their terms except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights.

**6.3 No Conflicts and Defaults Under Existing Agreements.** The execution and delivery of this Agreement, the Borrower Loan Documents and the Funding Loan Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the organizational or other governing documents of the Borrower or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the Borrower Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**6.4 No Actions.** There are no actions, suits or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower or the Property or involving the validity, priority or enforceability of the Deed of Trust or any other Borrower Loan Document or Funding Loan Documents or affecting Bank's right to receive payment in full of all amounts outstanding under this Agreement, the other Borrower Loan Documents or the Funding Loan Documents. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority. There (a) is no completed, pending or, to the best of Borrower's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Property, the Borrower, or any Loan Party, and (b) has been no assertion or exercise of jurisdiction over the Property, the Borrower or any Loan Party by any court empowered to exercise bankruptcy powers. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any Governmental Authority that would have the effect of preventing or hindering performance of its duties under this Agreement, any other Borrower Loan Documents or any Funding Loan Documents, nor are there any proceedings presently in progress or to its knowledge contemplated that would, if successful, lead to the issuance of any such order. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower as of the date this representation is made or remade have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein.

**6.5 Other Liens.** Borrower has made no contract or arrangement of any kind, the performance of which by the other party thereto would give rise to a lien on the Property, except for its arrangements with the Architect, the Contractor or the subcontractors if there is no Contractor.

**6.6 Leases.** All Leases are in full force and effect, there are no defaults under any of the provisions thereof by any party thereto, and all conditions to the effectiveness or continuing effectiveness of the Leases required to be satisfied as of the date hereof have been satisfied (if any).

**6.7 Financial Statements.** The Financial Statements delivered to Bank by Borrower and any Loan Party are true and correct in all material respects, have been prepared in accordance with accounting practices and principles acceptable to Bank and consistently applied, and fairly present the financial condition(s) of the Person(s) referred to therein as of the respective dates; no materially adverse change has occurred in the financial condition reflected in any such financial statement since the date shown thereon, and no additional material liabilities have been incurred by any such Person since the date thereof other than the borrowing contemplated hereby or other borrowing disclosed in writing to and approved by Bank.

**6.8 Compliance With Laws.** The Property and the actual use thereof by Borrower will comply in all material respects with all Governmental Requirements. Borrower has received no notices of violations of any Governmental Requirement.

**6.9 Permits, Approvals, Licenses.** Except for the certificate of occupancy, Borrower has obtained all licenses, permits and approvals necessary for the ownership, rehabilitation, operation and management of the Property, including all approvals essential to the transactions contemplated by this Agreement, the Funding Loan Documents, the Borrower Loan Documents and any other documents contemplated hereby or thereby

**6.10 Ownership of Real Property.** Borrower has, or as of the Closing Date will have, and will continue to have fee simple title to the Real Property, subject only to the Permitted Liens. The Borrower is the sole borrower under the Borrower Loan. Borrower shall make no changes to the Property, when it is built, or to the operation thereof that would affect the qualification of the Property under the Act. The Borrower intends to utilize the Property as multifamily rental housing during the Qualified Project Period (as defined in the Tax-Exempt Regulatory Agreement).

**6.11 Ownership of Personal Property.** Borrower owns directly all of the Personal Property free and clear of all liens, encumbrances and adverse claims and the security interest of Bank in the Personal Property shall be a first lien thereon.

**6.12 Other Financing.** Except for the City Loan, the HCD Loan and the Seller Loan or as otherwise disclosed in writing to Bank and approved by Bank in writing prior to the Closing Date, Borrower has not received other financing for either the acquisition of the Property or the rehabilitation and installation of the Improvements.

**6.13 Plans, Defects.** The Plans are satisfactory to Borrower, and to the extent required by any Governmental Requirement or any effective restrictive covenant, have been approved by all applicable Governmental Authorities and the beneficiaries of any such covenant respectively; the Plans so approved have been approved by Borrower and Contractor as set forth in the Certification of Plans and Specifications delivered to Bank by Borrower. The Borrower will make no changes to the Property or to the operation thereof which would affect the qualification of the Property under the Act or the Code.

**6.14 Utilities.** All utility services necessary for the rehabilitation of the Improvements and the operation thereof for their intended purpose are either available at the boundaries of the Real Property or all necessary steps have been taken by Borrower and applicable Governmental Authorities to assure the complete rehabilitation and installation thereof, including water supply, storm drain and sanitary sewer facilities, and gas, electric, cable and telephone facilities.

**6.15 Roads.** All roads necessary for the full use of the Improvements for their intended purposes have been completed or the necessary rights-of-way therefore have either been acquired by the applicable Governmental Authority or dedicated to public use and accepted by such Governmental

Authority. All necessary steps have been taken by Borrower and such Governmental Authority to assure the complete rehabilitation thereof.

**6.16 CC&Rs, Zoning.** Borrower has examined, is familiar with, and the Improvements will in all respects conform to and comply with, all covenants, conditions, restrictions, reservations and zoning ordinances affecting the Property.

**6.17 Finder's Fees.** Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other sum in connection with the execution of this Agreement, consummation of the transactions contemplated hereby, or the making of the Borrower Loan to Borrower.

**6.18 Draw Request.** Each Draw Request shall be true, complete and accurate and the submission of same shall constitute a reaffirmation of the representations, warranties and covenants contained herein.

**6.19 Other Information.** No information, statement or report furnished in writing to Governmental Lender or Bank by Borrower, any Loan Party or any of their respective representatives in connection with this Agreement, the Funding Loan Documents or the other Borrower Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by Borrower in connection with the preparation of any materials related to the issuance, delivery or offering of the Funding Loan Notes) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and the representations and warranties of Borrower and the statements, information and descriptions contained in Borrower's closing certificates, as of the Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions contained herein and in any certificate of Borrower delivered as of the Closing Date are reasonable and based on the best information available to Borrower.

**6.20 No Default.** No event has occurred and no condition exists with respect to Borrower, any Loan Party or the Property that would constitute an Event of Default or with the giving of notice or passage of time, or both, if not cured would become an Event of Default.

**6.21 Tax Certificate.** Borrower has complied with all terms and conditions of the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate pertaining to Borrower and the Property are true and accurate.

**6.22 Regulatory Agreement.** Borrower is not in default under the Regulatory Agreements. The Property is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. Borrower intends to cause the residential units at the Property to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. All Leases will comply with all Governmental Requirements and the Regulatory Agreements. The Property meets the requirements of this Agreement, the Regulatory Agreements, the Act and the Code with respect to multifamily rental housing.

**6.23 No Governmental Lender Relationships.** To the best knowledge of Borrower, no member, officer, agent or employee of Governmental Lender has been or is in any manner interested, directly or indirectly, in that Person's own, name or in the name of any other Person, in the Funding Loan Notes, the Funding Loan Documents, the Borrower Loan Documents, Borrower, any Loan Party or the Property, in any contract for property or materials to be furnished or used in connection with the Property, or in any aspect of the transactions contemplated by the Funding Loan Documents or the Borrower Loan Documents.

**6.24 Authorizations and Consents.** No authorization, consent, approval, order, registration declaration or withholding of objection on the part of or filing of or with any Governmental Authority not already obtained or made (or to the extent not yet obtained or made Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Agreement, the Funding Loan Documents, the Borrower Loan Documents or any other documents contemplated by this Agreement, the Funding Loan Documents or the Borrower Loan Documents, or the performance of the terms and provisions hereof or thereof by the Borrower.

**6.25 No Reliance.** Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Property; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or Governmental Lender is a party or of which it is a beneficiary including, without limitation, the Funding Loan Agreement; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Property; and that it has not relied on the Governmental Lender or Bank for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement, the Funding Loan Agreement or otherwise relied on Governmental Lender, Bank or Bank in any manner.

**6.26 Environmental Matters.** Borrower has not received any notice that it or the Property is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (collectively “Environmental Laws”), or with any rules, regulations and administrative orders of any Governmental Authority, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain “hazardous materials” (as defined in the Environmental Laws), nor has Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

**6.27 ERISA.** Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations thereunder, with the Code and with terms of such plan or plans with respect to each pension or welfare benefit plan to which Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

**6.28 Funding Loan Notes.** The weighted average maturity of the Funding Loan Notes does not exceed 120% of the average reasonably expected economic life of the Property financed with the proceeds of the Borrower Loan. The Funding Loan Notes are not and shall not be “federally guaranteed” as defined in Section 149(b) of the Code. Borrower intends to hold the Property for its own account and has no current plans to sell and has not entered into any agreement to sell all or any portion of the Property.

**6.29 Tax Credit Allocation Documents Effective.** The Tax Credit Allocation Documents are in full force and effect and have not been revoked, amended or modified in any way. Borrower knows of no reason why Project Completion could not occur on or before the Completion Date.

**6.30 Satisfaction of Conditions under Tax Credit Allocation Documents, City Loan Documents, Seller Loan Documents and HCD Loan Documents.** Each and every covenant, condition and obligation contained in the Tax Credit Allocation Documents, the City Loan Documents, the Seller Loan Documents and HCD Loan Documents required to be performed or satisfied by Borrower as of the date hereof, and each and every matter required to be approved thereunder as of the date hereof, has been satisfied or approved, as applicable.

**6.31 Tax Credits Not Subject to State Ceiling.** Fifty Percent (50%) or more of the aggregate basis of the Improvements and Borrower's interest in the Property will be financed with proceeds from the Funding Loan Notes and, therefore, paragraph (1) of Section 42(h) of the Code will not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

**6.32 Additional Representations, Covenants and Warranties.** Borrower also makes the representations, covenants and warranties set forth in Section 1 of the Special Conditions attached hereto as Exhibit C.

**7. BORROWER'S COVENANTS.** Borrower covenants and agrees with Governmental Lender and Bank that until the full and final payment of all sums owed under the Borrower Loan Documents and the Funding Loan Documents, unless Bank (or the Governmental Lender as to its Retained Rights) waives compliance in writing:

**7.1 Application of Advances.** Borrower shall receive the Advances made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such Advance.

**7.2 Borrower's Funds.** At the time and in amounts required by Bank, Borrower shall deposit Borrower's Funds into the Borrower's Funds Account. Should it appear at any time in Bank's judgment that the sum of undisbursed proceeds of the Borrower Loan and the then balance of the Borrower's Funds Account are insufficient to provide the financing for completion of the Improvements, Borrower shall pay to Bank, within ten days following receipt of written demand by Bank, an amount equal to such deficiency for deposit into the Borrower's Funds Account.

**7.3 Lien Priority.** At Borrower's sole cost and expense, Borrower shall maintain the Deed of Trust as a first lien on the Property, subject to the HCD Loan Senior Restrictions and Permitted Liens.

**7.4 Construction Start and Completion.**

**7.4.1** Borrower shall not commence rehabilitation of the Improvements, including, but not limited to, grading and site clearance, and shall not undertake any other act on the Real Property prior to recordation of the Deed of Trust, the result of which would cause any mechanics' or materialmen's lien thereafter filed to take priority over the lien of the Deed of Trust, unless prior arrangements satisfactory to both Bank and Title Insurer have been made.

**7.4.2** Borrower shall cause rehabilitation of the Improvements to be commenced not more than thirty (30) days after the recordation of the Deed of Trust.

**7.4.3** Borrower shall cause (a) the Improvements to be rehabilitated in a good and workmanlike manner, with materials of high quality, and in accordance with the Plans, Governmental Requirements and sound building and engineering practices, (b) the rehabilitation of the Improvements to be prosecuted with diligence and continuity and completed in substantial conformity with the Plans and to otherwise cause Project Completion to occur on or before the Completion Date, free and clear of liens or claims for liens (other than liens that have been bonded to the reasonable satisfaction of Bank), and (c) all licenses and permits necessary for the occupancy, use or sale of the Improvements to be issued. Borrower shall promptly commence and diligently proceed with the Project.

**7.4.4** Borrower shall complete the rehabilitation of the Improvements on or before the Completion Date. The rehabilitation of the Improvements shall be considered complete for purposes of this Agreement only when (a) the rehabilitation of the Improvements has been completed substantially in accordance with the Plans and has been fully paid for subject to Borrower's obligations to pay and discharge or cause the release or discharge of any mechanics' lien as provided in Section 7.14, (b) all work requiring inspection or certification by any Governmental Authority has been completed and all requisite certificates, approvals and other necessary authorizations (including any required certificates of occupancy including, but not limited to, temporary certificates of occupancy) have been obtained, and (c) streets and offsite

utilities located within or pertaining to the Property have been completed to the satisfaction of all applicable authorities.

## **7.5 Change Orders.**

**7.5.1** Borrower shall not permit any change in the Plans without Bank's prior consent if any such change (a) constitutes a material change in material or equipment specifications, architectural or structural design, or the value or quality of the Improvements, or (b) would result in an increase or decrease in the cost of rehabilitation of the Improvements in excess of the Single Change Order Limit for any single change, or in excess of the Aggregate Change Order Limit for all changes.

**7.5.2** Borrower shall submit any proposed change in the Plans to Bank not later than ten Business Days prior to the commencement of rehabilitation relating to such change.

**7.5.3** Borrower shall deliver to Bank in connection with any proposed change requiring Bank's prior written consent (a) a written request therefor, together with working drawings and a written description of the proposed change, submitted on a change order form acceptable to Bank and executed by Borrower, Architect and Contractor, and (b) evidence satisfactory to Bank as to the cost and time necessary to complete the proposed change.

**7.5.4** Prior to permitting any change in the Plans requiring Bank's consent, Borrower shall satisfy any condition of Bank's consent, including, but not limited to, depositing funds to cover any increased Construction Costs into the Borrower's Funds Account as required by Bank, which Bank is authorized to disburse in accordance with the Project Budget and the Disbursement Schedule for payment of such Change Orders upon completion of such changes to Bank's satisfaction.

**7.6 Detailed Cost Breakdown.** Borrower shall not modify the Project Budget or the Detailed Cost Breakdown without Bank's prior written consent, which consent may be conditioned upon, among other things, (a) Bank's receipt of evidence satisfactory to Bank that the change in the Project Budget or the Detailed Cost Breakdown is reasonably necessary, and (b) Bank's confirmation that, in the opinion of Bank, sufficient funds remain in the undisbursed proceeds of the Borrower Loan (and any funds in the Borrower's Funds Account, if any) to pay for all remaining direct or indirect costs to complete rehabilitation of the Improvements.

**7.7 Contractor Covenants.** Borrower shall (a) require from the Contractor (i) covenants similar to the covenants made by Borrower in Sections 7.3, 7.4 and 7.5, and (ii) a covenant that Contractor will, upon request, deliver to Bank the names of all Persons with whom Contractor has contracted or intends to contract for rehabilitation of the Improvements or for furnishing of labor or materials therefore; and (b) cause the Contractor (or if no Contractor, the subcontractors) to cooperate with Bank. Cost savings shall be transferred to contingency line items and thereafter be available for disbursement as provided in Section 5.5.2.

**7.8 Construction Contract Only.** Borrower shall not execute any contract or become party to any arrangement for the performance of work on the Real Property with any Person except Contractor, and if there is no Contractor, Borrower shall contract only with major subcontractors approved by Bank for the performance of work on the Real Property.

**7.9 Paid Vouchers.** Borrower shall deliver to Bank, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements.

**7.10 Application of Disbursements.** Borrower shall receive the disbursements to be made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such disbursement.

## **7.11 Intentionally Omitted.**



**7.12 Personal Property Installation.** Without Bank's written consent, Borrower shall not install materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract giving any Person other than Borrower any right or title to such property.

**7.13 Defect Corrections.** Upon demand of Bank, Borrower shall correct any defect in the Improvements or any departure from the Plans not approved by Bank.

**7.14 Stop Notices; Mechanic's Liens.** If (a) a bonded stop notice is received by Bank that Bank believes requires the withholding of funds from any Advance or from any disbursement of proceeds from the Borrower's Funds Account, or (b) a mechanics' lien, material supplier's lien or other construction lien is recorded against the Real Property, then Borrower shall within 20 days of such receipt or recordation or within fifteen (15) days of Bank's demand (whichever first occurs):

**7.14.1** pay and discharge same;

**7.14.2** effect the release of same by recording a surety bond in sufficient form and amount issued by a surety acceptable to Bank; or

**7.14.3** provide Bank with such other assurance as Bank, in its sole discretion, deems to be satisfactory for the payment of, and protection of Bank from, such lien or bonded stop notice.

**7.15 Record Keeping, Financial and Other Information.** Borrower shall keep and maintain full and complete books of account and other records reflecting the results of operations of the Property in accordance with accounting practices and principles acceptable to Bank and consistently applied, and shall furnish or cause to be furnished to Bank such financial information concerning Borrower, each Loan Party and the Property as Bank may require, including but not limited to:

**7.15.1** within forty-five (45) days after the close of each quarter, except for the final quarter of each year, Borrower's and Guarantor's Financial Statement as of the close of such period,

**7.15.2** within one hundred twenty (120) days of the close of each fiscal year-end, the annual Financial Statements for Borrower and each Guarantor. The Financial Statements of Borrower may be prepared by Borrower and certified as true and correct by the chief financial officer of Borrower or Guarantor. The Financial Statements of Guarantor shall be audited by an independent certified public accountant,

**7.15.3** within thirty (30) days after written request by Bank, a copy of the most recent filed Federal income tax returns for Borrower and each Loan Party (to the extent such Loan Party is not a disregarded entity for income tax purposes), together with all supporting schedules,

**7.15.4** within thirty (30) days after written request by Bank, the Financial Statements of Borrower and each Loan Party,

**7.15.5** within forty-five (45) days after the close of each quarter, including the final quarter of each year, a certified statement of Liquid Assets for Guarantor,

**7.15.6** within thirty (30) days of the final quarter of each year, a projected cash flow statement for the next succeeding calendar year for Guarantor, and

**7.15.7** promptly, upon request, provide any other financial information reasonably requested by Bank.

**7.16 Post-Construction Financial Reporting.** Upon completion of rehabilitation of the Improvements, Borrower shall furnish to Bank, without prior request or demand:

**7.16.1** Within thirty (30) days after the close of each calendar month prior to the Conversion Date and, thereafter within thirty (30) days of written request by Bank, a monthly or quarterly (as applicable) Operating Statement, a current rent roll and, if retail property, a schedule of gross sales; and

**7.16.2** Within one hundred twenty (120) days after the close of the operating year for the Property, an annual Operating Statement.

**7.17 Audit, Appraisal and Inspection Rights.** Borrower shall permit any representative of Governmental Lender or Bank, at any reasonable time, to inspect, audit and examine and copy the books and records of Borrower and each Loan Party. Bank shall have the right to obtain new appraisals or update existing appraisals at its sole cost and expense at any time while the Borrower Loan or any portion thereof remains outstanding. Borrower agrees to cooperate with Bank and the appraiser (and use best efforts to cause the tenants on the Project to cooperate with Bank and the appraiser) in permitting access to the Property and in obtaining operating and other relevant information on the Property. Following an Event of Default hereunder or in the case of a request to transfer the Property pursuant to the Deed of Trust, Borrower shall pay all appraisal fees and related expenses incurred by Bank in obtaining such appraisal reports.

**7.18 Dividends, Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not (a) make any distribution either in cash, stock or any other property, (b) redeem, retire, repurchase or otherwise acquire any shares or interest in Borrower, or (c) repay any outstanding indebtedness or other advance to any shareholder, partner, member or, if a trust, any trustor or beneficiary of Borrower.

**7.19 Payment of Lawful Claims.** Borrower shall pay or discharge all lawful claims, including taxes, assessments and governmental charges or levies imposed upon Borrower or Borrower's income or profits or upon any property belonging to Borrower prior to the date upon which any penalties attach; provided that Borrower shall not be required to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings and for which Borrower is maintaining adequate reserves in accordance with generally accepted accounting principles.

**7.20 Payment of Costs.** Borrower shall pay all costs and expenses incurred by Bank in connection with the enforcement by Bank of any of Borrower's obligations under this Agreement or the other Borrower Loan Documents, and the preparation of this Agreement and the other Borrower Loan Documents, including but not limited to (a) all appraisal fees, cost engineering and inspection fees, legal fees and expenses (including the fees and costs of in-house counsel and legal staff), accounting fees, environmental consultant fees and costs of title insurance, survey, seismic, escrow and other fees and charges, and (b) all taxes and recording expenses, including stamp taxes, if any.

**7.21 Approval of Easements and Other Documents.** Borrower shall submit to Bank for Bank's approval all prospective easements, private or public dedications, and declarations of covenants, conditions and restrictions intended to affect the Real Property and Bank's approval shall be obtained in writing prior to the execution or granting thereof by Borrower. Borrower's request for approval of any prospective easement or private or public dedication shall be accompanied by a drawing or survey showing the precise location of such prospective easement or private or public dedication. Borrower's request for approval of any prospective declaration of covenants, conditions and restrictions shall be accompanied by a description of the property affected thereby.

## **7.22 Compliance with Laws; Preservation of Rights.**

**7.22.1** Borrower shall comply promptly with all Governmental Requirements, and shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon and therefrom.

**7.22.2** If the Improvements contain wooden exterior elevated elements with load bearing components, Borrower shall comply with the requirements of California Health and Safety Code Section 17973, including all inspection and reporting requirements.

**7.22.3** If payment of the indebtedness secured by the Deed of Trust or any of the other Security Documents is to be insured or guaranteed by any governmental agency, Borrower shall comply with all rules, regulations, requirements and statutes relating thereto or provided in any commitment issued by any such agency to insure or guarantee payment of such indebtedness.

**7.23 Notices.** Borrower shall promptly and in no event less than ten (10) Business Days after Borrower receives notice thereof notify Bank and the Governmental Lender in writing of:

**7.23.1** the occurrence of any Event of Default or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto;

**7.23.2** any litigation affecting Borrower, any Loan Party or the Property, or any other circumstance, event or occurrence that may reasonably be expected to result in a material adverse change in (a) the financial condition of Borrower or any Loan Party, (b) Borrower's ability to timely perform any of Borrower's obligations under any of the Borrower Loan Documents and the Funding Loan Documents, (c) the physical condition or operation of the Property; or (d) the tax exempt status of the interest payable on the Funding Loan Notes;

**7.23.3** the issuance against any Loan Party or the property of any Loan Party of any writ of attachment, execution or other judicial lien, which is not dismissed within fifteen (15) days;

**7.23.4** any notice that the Improvements or rehabilitation thereof, the Property or Borrower's business fails in any respect to comply with the applicable Governmental Requirement; and

**7.23.5** the occurrence (or receipt of written notice) of any default under the Regulatory Agreements, the City Loan Documents, the Seller Loan Documents or the HCD Loan Documents.

## **7.24 Indemnity.**

**7.24.1** Borrower shall indemnify, defend and hold each of the Indemnified Parties harmless from and against any and all liabilities, claims, actions, proceedings, damages, costs and expenses (including all reasonable attorney's fees, including, but not limited to, the fees and costs of any of such party's in-house counsel and legal staff) arising out of or resulting from:

**(a)** The Borrower Loan, the Borrower Loan Documents, the Funding Loan Documents, Regulatory Agreements, City Loan Documents, the Seller Loan Documents, the HCD Loan Documents or the execution or amendment or performance thereof or in connection with the transactions contemplated therein, including the issuance, sale and/or resale of the Funding Loan Notes.

**(b)** Any finder's fee, brokerage commission, loan commission or other sum in connection with the consummation of the transactions contemplated hereby.

**(c)** The development of the Property, rehabilitation of the Improvements or the ownership, operation or use of the Property

**(d)** Any declaration of taxability of interest on the Funding Loan Notes, or allegations (or regulatory inquiry) that interest on the Funding Loan Notes are taxable, for federal tax purposes.

**(e)** The issuance of any Set Aside Letter, whether such matters are based on theories of derivative liability, comparative negligence or otherwise, at Borrower's own cost and with counsel approved by Bank, unless Bank elects to conduct its own defense at the expense of Borrower in the event Bank reasonably determines a conflict of interest exists by reason of common representation of if all parties commonly represented do not agree as to the action (or inaction) of counsel.

**(f)** Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or rehabilitation of, the Project or any part thereof.

**(g)** Any lien (other than a Permitted Lien) or charge upon payments by the Borrower to the Governmental Lender and/or the Bank hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender in respect of any portion of the Project.

**(h)** Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof other than violations that arose subsequent to Borrower's ownership of the Property and do not relate to Borrower's prior ownership of the Property.

**(i)** The prepayment, in whole or in part, of the Funding Loan Notes.

**(j)** Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate, offering statement or disclosure or continuing disclosure document for the Funding Loan Notes or any of the documents relating to the Funding Loan Notes to which the Borrower is a party, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Funding Loan Notes of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading.

**(k)** The Bank's acceptance or administration of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties as Bank thereunder or under any of the documents relating to the Funding Loan Notes to which it is a party.

Notwithstanding the foregoing, Borrower shall not be required to indemnify and hold the Indemnified Parties harmless from any liability, claim, action, damage, cost, or expense to the extent such liability, claim, action, damage, cost or expense results solely from the willful misconduct of the Governmental Lender, each of its respective officers, members governing members or partners, directors, employees, attorneys and agents, past, present and future and the gross negligence or willful misconduct of such other Indemnified Party.

**7.24.2** The liability of Borrower under this indemnity shall not be limited or impaired in any way by (a) the release, reconveyance, foreclosure or other termination of the Deed of Trust, the payment in full of the Borrower Loan, any bankruptcy or other bankruptcy proceeding, or any other event whatsoever; (b) any provision in the Borrower Loan Documents or the Funding Loan Documents or applicable law limiting Borrower's liability or any Indemnified Party's recourse or rights to a deficiency judgment; or (c) any change, extension, release, inaccuracy, breach or failure to perform by any party under the Borrower Loan Documents or the Funding Loan Documents. Borrower's liability hereunder is direct and primary and not secondary as a guarantor or surety.

**7.24.3** This indemnity is not intended to give rise to, and shall not give rise to, a right of Bank to claim payment of the principal and accrued interest with respect to the Borrower Loan as a result of a claim under this Section 7.24.

**7.24.4** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by such Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of Borrower if, in the judgment of such Indemnified Party, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

**7.24.5** Notwithstanding any transfer of the Property to another owner in accordance with the provisions of this Agreement, Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 7.24 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of Borrower hereunder.

**7.24.6** The rights of any persons to indemnity hereunder and to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan Notes and, in the case of Bank, any resignation. The provisions of this Section 7.24 shall survive the termination of this Agreement.

**7.24.7** This indemnity is in addition to, and shall in no way limit the provisions of Section 9 of the Tax-Exempt Regulatory Agreement. With respect to the Governmental Lender, the Tax-Exempt Regulatory Agreement shall control in any conflicts between this Section 7.24 and Section 9 of the Tax-Exempt Regulatory Agreement.

**7.25 Performance of Acts.** Upon request by Bank, Borrower shall perform all acts that may be necessary or advisable to perfect any lien or security interest provided for in the Borrower Loan Documents or the Funding Loan Documents to carry out the intent of the Borrower Loan Documents or the Funding Loan Documents.

**7.26 Notice of Change.** Borrower shall give Bank prior written notice of any change in the location of Borrower's place of business (or Borrower's chief executive office if Borrower has more than one place of business) or Borrower's name, business structure or place of incorporation or other formation, and, unless otherwise approved by Bank in writing, Borrower shall maintain all tangible Personal Property (other than the books and records) at the Real Property and all books and records at Borrower's place of business (or chief executive office if Borrower has more than one place of business).

**7.27 Tax Certificate.** Borrower shall timely comply with all of its obligations under the Tax Certificate (which Tax Certificate is hereby incorporated herein as fully as if set forth at length herein). Notwithstanding anything in this Agreement to the contrary, in the event of a conflict between the terms of this Agreement and the Tax Certificate, the terms of the Tax Certificate shall control.

**7.28 Funding Loan Documents.** Borrower shall timely perform its obligations under the Funding Loan Documents.

**7.29 Regulatory Agreements.** Borrower hereby covenants and agrees (a) to comply with all provisions of the Regulatory Agreements; to advise Bank and Governmental Lender in writing promptly

upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Regulatory Agreements; (b) upon written direction by Governmental Lender, to cooperate fully and promptly with Governmental Lender in enforcing the terms and provisions of the Tax-Exempt Regulatory Agreement; and (c) to file in accordance with the time limits established by the Regulatory Agreements all reports and certificates required thereunder, and the rebate certifications required by the Tax-Exempt Regulatory Agreement. Neither Governmental Lender nor Bank shall incur any liability in the event of any breach or violation of any of the Regulatory Agreements by Borrower, and Borrower agrees to indemnify the Indemnified Parties from any claim or liability for any such breach under the Regulatory Agreements. If an event of default occurs under the Tax-Exempt Regulatory Agreement, the Governmental Lender may declare an event of default or exercise any available remedy under the Tax-Exempt Regulatory Agreement, however, the Governmental Lender may not, without the prior written consent of the Funding Lender, (i) declare the principal of, and the interest accrued on, the Borrower Note to be immediately due and payable, (ii) declare an event of default under the other Borrower Loan Documents, (iii) commence foreclosure proceedings under the Deed of Trust, or (iv) exercise any other remedy under the Borrower Loan Documents, except with respect to enforcement of Reserved Rights.

**7.30 Prohibited Activities.** Without Bank's prior written consent Borrower shall not:

**7.30.1** Engage in any business activities substantially different from Borrower's present business or liquidate or dissolve Borrower's business;

**7.30.2** Suffer or permit any liens or encumbrances to be placed on the Property other than the Permitted Liens.

**7.30.3** Merge or consolidate with or into, or enter into any partnership, joint venture, syndicate or similar business arrangement with, any Person or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

**7.30.4** Transfer any interest in the Property (other than the lease of residential units within the Property for a term of one-year or less and otherwise in compliance with the Regulatory Agreements and dispositions of Personal Property expressly permitted by the Borrower Loan Documents) without the prior written consent of Bank, which consent may be withheld in Bank's absolute discretion. In connection with the foregoing consent requirements, Borrower acknowledges that Bank relied upon Borrower's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion and operation of the Property. Transfers requiring Bank's prior written consent shall include, without limitation, (a) involuntary transfers and transfers by operation of law; (b) liens and assignments as security for obligations, whether voluntary or involuntary; and (c) except as otherwise expressly permitted by the terms of the Deed of Trust, the issuance, sale, assignment, disposition, encumbering or other transfer of any direct or indirect ownership interest in Borrower, any Loan Party or any general partner, member or shareholder of any Loan Party, whether voluntary or involuntary, by operation of law or otherwise; provided, however, that in the case of The Related Companies, L.P., Transfers of up to twenty-five percent (25%) (individually or in the aggregate) of ownership interests in The Related Companies, L.P. prior to Conversion and of up to one hundred percent (100%) of such ownership interests in The Related Companies, L.P. thereafter are permitted. No sale, lease or other transfer shall relieve Borrower from primary liability for its obligations under the Borrower Loan Documents or the Funding Loan Documents, and Borrower shall deliver to Bank all documents reasonably required by Governmental Lender to evidence its continuing liability. No consent by Bank in connection with any Transfer shall constitute (x) a consent by Governmental Lender under the Tax-Exempt Regulatory Agreement to any sale, assignment, encumbrance, transfer or other disposition of all or any part of the Property, or any direct or indirect interest therein, or (y) a waiver by Governmental Lender of any term or condition of the Tax-Exempt Regulatory Agreement. Notwithstanding the foregoing, (a) Tax Credit Investor may transfer its limited partnership interests in Borrower to any limited partnership or limited liability company in which Tax Credit Investor, or an affiliate thereof is the general partner or managing member; provided that following such transfer, Tax Credit Investor shall remain jointly and severally liable for all contributions to be made by Tax Credit Investor under the Partnership Agreement, (b) the transfer of limited partnership interests or non-

managing membership interest in Tax Credit Investor shall not constitute a “transfer” hereunder, (c) subject to Bank’s consent, which shall not be unreasonably withheld, Tax Credit Investor may remove and replace the General Partner in accordance with the Partnership Agreement following a default by the General Partner thereunder, (d) subject to Banks consent, which shall not be unreasonably withheld, Borrower’s administrative general partner may remove and replace the managing General Partner in accordance with the Partnership Agreement following a default by the managing General Partner thereunder, (e) each General Partner may pledge its general partnership interest in the Borrower to the Tax Credit Investor, provided that such pledge shall be subject and subordinate to such General Partner’s pledge to Bank pursuant to the Assignment of Partnership Interest (GP), and (f) Tax Credit Investor may pledge its limited partnership interest in the Borrower to the Borrower as security for the Tax Credit Investor’s obligations to make the capital contributions required pursuant to the Partnership Agreement. Borrower acknowledges that any transfer permitted by this Section must also comply with the terms and conditions of the City Loan Documents, the Seller Loan Documents, the HCD Loan Documents and Regulatory Agreements.

**7.30.5** Amend or modify in any material respect any organizational documents pertaining to Borrower or any Loan Party other than amendments to the Partnership Agreement solely with respect to transfers of partnership interests permitted by Section 7.30.4 above and no other amendments to the organizational documents.

**7.30.6** Cause or otherwise consent to the formation of any community facilities district that includes the Property or any part of the Property pursuant to the Mello-Roos Community Facilities Act of 1982, any assessment district that includes the Property or any part of the Property pursuant to the Municipal Improvement Act of 1913, or any other comparable or similar district, area or territory that includes the Property or any part of the Property pursuant to any Law, or cause or otherwise consent to the levying of special taxes by any community facilities district against the Property or any part thereof, the levying of assessments by any such assessment district against the Property or any part thereof, or the levying of assessments, taxes and/or other impositions by any such district, area or territory.

**7.30.7** Enter into any new Funding Loan Documents, Seller Loan Documents, City Loan Documents or HCD Loan Documents, or amend, modify, supplement, cancel or terminate any Funding Loan Documents, Seller Loan Documents, City Loan Documents or HCD Loan Documents.

**7.30.8** Take, or omit to take, any action that, if taken or omitted, would jeopardize or adversely affect the tax-exempt status of the interest payable on the Funding Loan Notes.

**7.30.9** Except for the Regulatory Agreements, accept any deed or other restriction or enter into any regulatory or other similar agreement regulating or restricting the use or operation of the Property or restricting the tenant income and/or rent levels for the Property in connection with the allocation to the Property of federal low-income housing tax credits or otherwise.

**7.31 Set Aside Letters.** In the event Bank issues, at Borrower’s request, any Set Aside Letter, Borrower represents, warrants and agrees as follows:

**7.31.1** The sum that Borrower requests Bank to allocate for Bonded Work shall be sufficient to pay for the costs of construction and completion of the Bonded Work in accordance with any agreement between Borrower and the Governmental Authority and a copy of such agreement shall be furnished to Bank by Borrower as a condition precedent to the issuance by Bank of any Set Aside Letter;

**7.31.2** Bank is irrevocably and unconditionally authorized to disburse to the Governmental Authority or Surety all or any portion of proceeds of the Borrower Loan upon a demand of the Governmental Authority or Surety made in accordance with the terms and conditions of the Set Aside Letter;

**7.31.3** Any disbursement or payments that Bank makes or may be obligated to make under any Set Aside Letter, whether made directly to the Governmental Authority, Surety, or to others for completion of all or part of the Bonded Work, shall be deemed an Advance to or for the benefit of Borrower;

**7.31.4** Bank shall have no obligation to release any security under the Borrower Loan Documents unless and until Bank has received a full and final written release of its obligations under each Set Aside Letter; and

**7.31.5** The fee for issuing each Set Aside Letter hereunder shall be determined when each Set Aside Letter is issued by Bank.

**7.32 Management of Property.** Borrower shall not enter into any agreement providing for the management or operation of the Real Property or the Improvements without the prior written consent of Bank. Bank acknowledges that it has consented to Related Management Company, L.P., as the initial manager of the Real Property and to the management agreement entered into between Related Management Company, L.P. and Borrower dated as of [\_\_\_\_\_] **[CHECK]**, as amended.

**7.33 Leases.**

**7.33.1 Negative Covenants.** In addition to the provisions of the Deed of Trust, and regardless of whether or not Bank's prior written approval is required, Borrower shall not, without Bank's prior written consent: (a) grant to any tenant any right or option to purchase the Property or any portion thereof, or any other present or future interest in any portion of the Property other than the right to use and occupy the leased premises, (b) grant to any tenant the right to terminate its lease if the lease of one or more other tenant is terminated, or (c) accept payment of rent from any tenant in any form other than cash or cash equivalent.

**7.33.2 Affirmative Covenants.** In addition to the provisions of the Deed of Trust, Borrower shall (a) document all Leases covering any portion of the Property or the Improvements on a standard lease form approved by Bank (with no material change), (b) not enter into any lease for any Unit with a potential tenant unless such lease is an Acceptable Unit Lease and the rent charged thereunder complies with the City Loan Documents, the HCD Loan Documents, the Seller Loan Documents and all Regulatory Agreements and is consistent with the rent proforma submitted by Borrower and approved by Bank (c) enter into Leases only with bona fide third party tenants in an arm's length transaction, (d) whether or not Bank's prior written approval is required, deliver to Bank, within ten days of Bank's request, all new Leases (together with all financial information obtained by Borrower regarding the tenant) and all modifications, amendments and consents to assignment or subletting of existing Leases, and (e) promptly notify Bank in writing of material claims of any breach, if any, of any of Borrower's obligations as landlord under any Lease.

**7.34 Compliance.** Upon the request of Bank from time to time and at any time certification of the matters set forth below is provided to Governmental Lender or any Governmental Authority, Borrower shall promptly provide to Bank the following:

**7.34.1** Borrower's certification of the Property's compliance with the rules qualifying the interest payable on the Funding Loan Notes for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued under Section 142(d) and the requirements of the Regulatory Agreements;

**7.34.2** Property has received or receives a tax credit allocation, Borrower's certification of the Property's compliance with the requirements of Section 42 of the Code and the regulations issued under Section 42; and

**7.34.3** Such other documents, certificates and other information as may be deemed necessary or appropriate to enable Bank to perform the functions under this Agreement or the Funding Loan Agreement.



**7.35 Property Reserves.** Borrower shall establish and maintain such operating, replacement and/or tenant improvement reserves for the Property as required by Bank pursuant to the terms of the Borrower Loan Documents, and Borrower hereby grants to Bank a security interest in all such reserves. Borrower agrees to execute such supplemental security documentation as Bank may request confirming such security interest.

**7.36 Establishment of Capital Improvement Reserve Account.**

**7.36.1** Concurrently with the Closing Date and as a condition precedent thereto, Borrower shall: (i) establish with Bank the Capital Improvement Reserve Account and Borrower shall execute such documents as are necessary to evidence same and to create and perfect in favor of Bank a security interest therein for the purpose of paying for any capital improvements which are necessary for the continued operation of the Property and which capital improvements are approved by Bank, which approval will not be unreasonably withheld ("Capital Improvements"); and (ii) commencing after the Conversion Date, on the first day of the month in which Borrower is required to make its first principal and interest payment under the Borrower Notes, and continuing on the first day of every month thereafter, deposit or cause to be deposited into the Capital Improvement Reserve Account an amount equal to no less than \$3,000 each month.

**7.36.2** Borrower shall be entitled to withdraw funds from the Capital Improvement Reserve Account from time to time (but no more often than once every thirty (30) days and in an amount of no less than \$1,000 for each such withdrawal) to cover Capital Improvements, but only upon ten (10) days prior written notice from Borrower to Bank requesting to withdraw such funds and only so long as no Event of Default exists and no event has occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default. Said written request shall set forth the amount of funds Borrower wishes to withdraw from the Capital Improvement Reserve Account, shall set forth with specificity those Capital Improvements for which the funds are to be used and shall be accompanied by copies of invoices or other evidence satisfactory to Bank confirming the cost of such Capital Improvements. Bank may also condition the withdrawal of funds from the Capital Improvement Reserve Account upon delivery by Borrower of such contractor's affidavits, owner's sworn statements, partial and final waivers of lien and other additional documentation Bank may require to ensure that the Capital Improvements have been completed free and clear of any claims of lien, and in a good and workmanlike manner and otherwise in accordance with all applicable legal requirements. The disbursement of funds withdrawn from the Capital Improvements Reserve Account may be made, in Bank's discretion, either directly to the parties entitled thereto or to Borrower to pay the same. If such funds are disbursed directly to Borrower, Borrower shall provide Bank with evidence of the payment of the cost of the Capital Improvements within thirty (30) days after Bank's written request therefor following the date such funds are withdrawn from the Capital Improvement Reserve Account.

**7.36.3** Borrower shall diligently pursue completion of all Capital Improvements upon the commencement of the same. All Capital Improvements shall be made in a good and workmanlike manner and shall be completed free and clear of any mechanic's or materialman's liens and encumbrances. Borrower shall pay all costs necessary for completion of all Capital Improvements without regard to the sufficiency of the funds in the Capital Improvement Reserve Account. Borrower shall not commence construction of any Capital Improvement or other work prior to obtaining a building permit, if a building permit is required to perform the work, and all other governmental authorizations required with respect thereto, which Borrower shall provide to Bank upon request. Once any construction work has commenced, Borrower shall cause same to be completed substantially in accordance with the plans and specifications therefor and in compliance with all restrictive covenants applicable thereto, free and clear of liens or claims for liens, and shall correct all material defects therein. No disbursement of funds from the Capital Improvement Reserve Account shall constitute a waiver of Bank's right to require compliance with the foregoing covenants.

**7.37 Rent Restrictions.** Borrower shall comply, and cause the tenants occupying the Units to comply, with the Rent Restrictions, including, without limitation, maintaining all appropriate records.

**7.38 Preservation of Tax Credits.** Borrower shall observe and perform all obligations imposed on Borrower for the purpose of obtaining, maintaining and utilizing the maximum amount of Tax Credits allocated pursuant to the Tax Credit Allocation Documents and to operate the Project, or to cause the appropriate parties to operate the Project, in accordance with all applicable provisions of the Code and the R&T Code, if applicable, and all other statutes and regulations governing the Tax Credits including, without limitation, the monitoring and reporting requirements set forth in the Qualified Allocation Plan.

**7.39 Compliance with City Loan Documents, Seller Loan Documents, HCD Loan Documents and Regulatory Agreements.** Borrower shall observe and comply with all of the terms and conditions set forth in the City Loan Documents, the Seller Loan Documents, the HCD Loan Documents and all Regulatory Agreements.

**7.40 Payment of Development Fee.** Borrower shall not pay [\_\_\_\_\_] **[CHECK]**, more than (i) [\$770,000] **[CHECK]** of their combined development fee in the aggregate on or prior to the Closing Date, (ii) [\$1,250,000] **[CHECK]** of their combined development fee in the aggregate on or prior to the Completion Date, (iii) [\$1,900,000] **[CHECK]** of their combined development fee in the aggregate prior to Conversion, (iv) [\$2,270,000] **[CHECK]** of their combined development fee in the aggregate prior to the submission of the placed in service application and cost certification to the Allocation Committee for approval, and (v) [\$2,400,000] **[CHECK]** of their combined development fee in the aggregate prior to receipt of IRS Form 8609 from the Allocation Committee.

**7.41 IRS Form 8609.** Borrower shall deliver to Bank the IRS Form 8609 within five (5) business days following Borrower's receipt of the same from the Allocation Committee.

**7.42 Obtaining and Maintaining Real Property Tax Exemption.** Borrower shall cause the [Managing General Partner to maintain its status as an "eligible limited liability company"] **[CHECK]** (as such term is used in Section 214(g) of the R&T Code) or, if the Managing General Partner no longer maintains its status as an "eligible limited liability company," to promptly replace such entity with an "eligible limited liability company" or "eligible non-profit corporation" as managing general partner of Borrower approved in writing by Bank, and take all actions and provide such certifications as may be necessary from time to time so that the Project shall be exempt from the payment of ad valorem real property taxes in accordance with the provisions of Section 214(g) of the R&T Code.

**7.43 Intentionally Omitted.**

**7.44 Progress Reports and Annual Project Status Reports; Allocation Committee Notices.** Borrower shall promptly deliver to Bank copies of all "Progress Reports" all "Annual Project Status Reports" and all other reports delivered by Borrower to the Allocation Committee or Subordinate Lender from time to time including, without limitation, those reports required by the terms and conditions of the Qualified Allocation Plan or as otherwise required under the terms of the Tax Credit Allocation Documents; such reports shall be delivered to Bank concurrently with the delivery of the same to the Allocation Committee. Borrower shall promptly deliver to Bank copies of all material notices and/or correspondence it receives from time to time from the Allocation Committee to the extent the same relate to the allocation of Tax Credits.

**7.45 Hedge.**

**7.45.1** As a condition precedent to making the Borrower Loan, the Borrower shall enter into one or more interest rate swap, forward swap or swaption or interest rate cap or collar transaction or similar transactions designed to protect against fluctuations in the interest rate with respect to Borrower Note A-2 commencing no later than the Initial Outside Conversion Date and expiring no earlier than the Maturity Date for Borrower Note A-2 with a counterparty acceptable to Bank (which counterparty may, but is not required to be, Bank) (together, as modified from time to time, the "Hedge"). The notional amount of the Hedge must be the outstanding principal amount of Borrower Note A-2 as of the Outside Conversion Date or, if later, the effective date of the Hedge. The Hedge shall provide for a fixed rate of interest not to

exceed (or otherwise protect against the interest rate on Borrower Note A-2 exceeding) [\_\_\_\_%] **[CHECK]** (inclusive of the Margin applicable to Borrower Note A-2 during the Permanent Phase). The cost of the Hedge must be paid in full on its effective date. The identity of the counterparty and the form and substance of the documents and agreements evidencing, securing, guarantying or otherwise governing the Hedge, including, without limitation, any ISDA Master Agreement and Schedule thereto, and any confirmations evidencing the Hedge (together, the "Hedge Documents"), shall be acceptable to Bank in the Bank's sole discretion. In no event shall the counterparty have a rating by a national rating agency which is less than the rating assigned by such rating agency to Bank. No Hedge Document shall be secured by the Project unless expressly consented to in writing by Bank, which consent may be withheld in Bank's sole discretion.

**7.45.2** On the Closing Date, the Borrower shall acquire a Hedge complying with the requirements of this Section 7.45 and Section 4.1.13. As a condition to the Conversion, the Hedge shall comply with the requirements of this Section 7.45 and subsection (t) of Exhibit D (Conditions to Conversion).

**7.45.3** The Borrower shall timely perform all of its obligations under the Hedge Document in accordance with its terms, including payment of all breakage and termination fees due under the applicable Hedge Documents. Unless Bank is the counterparty, the Borrower may not exercise any right or remedy under any Hedge Document without the Bank's prior written consent and shall exercise its rights and remedies under the Hedge Documents as directed by the Bank in writing.

**7.45.4** So long as the Borrower is required to maintain a Hedge, the Borrower shall not terminate, transfer or consent to any termination or transfer of the Hedge without the Bank's prior written consent, which consent may be withheld in Bank's sole discretion. No Hedge shall be terminated for any reason unless Borrower enters into a new Hedge complying with the requirements of this Section 7.45; provided, that no Hedge undertaken with Bank may be terminated, terminated and replaced or transferred by the Borrower without the consent of Bank, which consent may be withheld by Bank in its sole discretion. Each replacement Hedge must have a term which commences no later than the later of the Outside Conversion Date or the termination date of the preceding Hedge. If Borrower desires to transfer or terminate a Hedge, Borrower shall provide Bank for Bank's approval written notice thereof at least sixty (60) days prior to termination of the existing Hedge, together with a description of the terms proposed for the replacement Hedge and the identity of the financial institutions who will bid to be the counterparty on the replacement Hedge. In addition, the Borrower shall provide the Bank for Bank's approval the identity of the counterparty and copies of the proposed replacement Hedge Documents at least fourteen (14) business days prior to the termination of the existing Hedge; provided, however, that if a Hedge unexpectedly and unavoidably terminates on a date other than its scheduled expiration date, the Borrower shall, within fourteen (14) business days of such termination, obtain a new Hedge satisfying the requirements of this Section 7.45; provided that if such terminated Hedge is one provided by Bank, Bank shall be under no obligation to permit such replacement Hedge to be entered into or to forbear from exercising its creditor remedies during such time.

**7.45.5** If Bank is not (or is no longer) the counterparty to the Hedge, the Borrower shall assign each Hedge in effect from time to time to Governmental Lender and Bank pursuant to an assignment of hedge ("Assignment of Hedge") in a form and content acceptable to Bank in its sole discretion. The Assignment of Hedge must be entered into on or before the effective date of the Hedge. The Hedge Documents and the Assignment of Hedge shall direct the counterparty to make any payments on the Hedge directly to Bank to be applied by Bank to payments due under the Borrower Loan, provided that after the occurrence of an Event of Default, Bank may apply such payments as may determine in its discretion.

**7.46 Intentionally Omitted.**

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

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Exempt Regulatory Agreement;

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

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

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Lender Note and will not make any use of the proceeds of the Funding Lender Note, or of any other funds which may be deemed to be proceeds of the Funding Lender Note under the Code and the related regulations of the United States Treasury, which would cause the Funding Lender Note to be "arbitrage bonds" within the meaning of Section 148 of the Code;

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

(f) Pursuant to the requirements of Treasury Regulation Section 1.148-1(b), Borrower (or any related person contemplated by such regulations) will not purchase the Funding Loan Note in an amount related to the amount of the Borrower Loan; and

(g) In the event of a conflict between the terms of this Section 7.47 and the Tax Certificate, the terms of the Tax Certificate shall control.

**8. EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder and at Bank's option, exercisable in its sole discretion, shall terminate any obligation of Bank to make any Advance or disbursement of Borrower's Funds. Upon the occurrence of an Event of Default, Bank shall also have the option, exercisable in its sole discretion, to declare the Borrower Loan immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demand of any kind or character; provided, however, upon the occurrence of any Event of Default that, under the terms of any Borrower Loan Document or Funding Loan Document results in the Borrower Loan becoming automatically due and payable, such occurrence shall result in automatic acceleration of payments of all principal and interest due under the Borrower Loan:

**8.1** Borrower fails to (a) pay when due any sums payable under any Borrower Loan Document or Funding Loan Document after giving effect to any express curative provisions (if any) provided herein or therein and, in the case of payments other than principal or interest, in the event that there is no curative provision, within ten (10) days after the date when due, or (b) deposit with Bank any of Borrower's Funds as and when required under this Agreement.

**8.2** Borrower has breached, or defaulted under, any term, condition or provision contained in (a) any Borrower Loan Document or Funding Loan Document that is not specifically referred to in this Section 8 and such breach or default continues uncured after any applicable notice and cure periods (or, if no notice or cure period is stated, continues uncured for more than thirty (30) days after notice), provided, however, that if such breach cannot reasonably be cured within the applicable cure period, no Event of Default shall be deemed to have been committed hereunder if Borrower commences to cure such breach within the applicable cure period and thereafter diligently prosecutes such cure to completion, provided that, in all events, the cure of such default shall be completed to the satisfaction of Bank not later than sixty (60) days in the aggregate from the date of such default, or (b) the Tax-Exempt Regulatory Agreement or

other Funding Loan Document after delivery of any required notice of default and subject to any applicable notice and cure periods provided therein.

**8.3** Borrower or Contractor does not (a) commence rehabilitation of the Improvements within the time period required in this Agreement, (b) proceed diligently and continuously with the rehabilitation of the Improvements, or the rehabilitation of the Improvements is otherwise discontinued for a period of five (5) days or more, for any reason other than events of Force Majeure, or (c) achieve Project Completion on or before the Completion Date.

**8.4** Any representation or warranty by Borrower or any Loan Party made hereunder or under any other Borrower Loan Document proves to be materially false or misleading in any material respect when made.

**8.5** Any person obtains an order or decree in any court of competent jurisdiction prohibiting the rehabilitation of the Improvements or Borrower or Governmental Lender and Bank from performing this Agreement, and such order or decree is not vacated within thirty (30) days after the granting thereof.

**8.6** Borrower neglects, fails or refuses to keep in full force and effect any permit or approval with respect to the rehabilitation of the Improvements or the use and occupancy thereof, and such failure continues for thirty (30) days after Borrower obtains actual knowledge thereof.

**8.7** Any bonded notice to withhold in connection with the Borrower Loan is validly served on Governmental Lender or Bank and within ten (10) days of the receipt of such service (a) is not discharged, or (b) if the amount claimed is disputed in good faith by Borrower or Contractor, an appropriate counter bond or equivalent acceptable to Bank is not provided to Bank.

**8.8** The imposition, voluntary or involuntary, of any lien or encumbrance upon the Property without Bank's written consent, unless an adequate counter bond is provided and such lien is accordingly released within ten (10) days after the Borrower obtains actual knowledge of the imposition of such lien.

**8.9** Bank fails to have an enforceable first lien on or security interest in any property given as security for the Borrower Loan, except for Permitted Liens and as permitted by Bank in writing.

**8.10** An event or condition occurs or arises that materially impairs Borrower's intended use of the Property and such event or condition is not remedied within thirty (30) days.

**8.11** Borrower neglects, fails or refuses to keep in force and effect any insurance coverage required by Bank.

**8.12** Any Funding Loan Document to which Borrower is a party is amended, modified or terminated without Bank's prior written consent.

**8.13** Interest on the Funding Loan Notes is no longer excludable from the gross income of the holder thereof for federal income tax purposes for any reason other than the owner of the Funding Loan Notes being deemed to be a "substantial user" (within the meaning of Section 147(a) of the Code) of the Project or a "related person" (as defined in Section 147(a) of the Code) solely due to the fact that Bank has a direct or indirect ownership interest in Borrower.

**8.14** The occurrence of an event of default by Borrower under the City Loan Documents, the Seller Loan Documents, the HCD Loan Documents or Regulatory Agreement(s) (following the expiration of any curative periods set forth therein).

**8.15** The failure of Borrower to comply with any of the terms and conditions of the Tax Credit Allocation Documents, the failure of Borrower to cause Project Completion to occur on or before the Completion Date unless a later date for "placement in service" is permitted by the Allocation Committee

and Section 42 of the Code, then on or before such later date, or the failure of Borrower to comply with any of the monitoring or reporting requirements set forth in the Qualified Allocation Plan and the failure of Borrower to cure such failure on or before the first to occur of the date within which cure is permitted under the applicable document or thirty (30) days after Borrower obtains actual knowledge of such failure.

**8.16** The determination by Bank (in Bank's reasonable opinion) at any time that (i) paragraph (1) of Section 42(h) of the Code will apply to the allocation of the Tax Credits or (ii) Project Completion will not occur on or before the Completion Date.

**8.17** The maximum amount of Tax Credits reserved by the Allocation Committee under the Preliminary Reservation is reduced by the Allocation Committee which results in a reduction of the Tax Credit Investor's capital contributions to Borrower which, together with other financing or equity investment permitted under the Borrower Loan Documents, would prevent Borrower from making the full Paydown Amount on or before the Outside Conversion Date, as determined by Bank in its sole discretion.

**8.18** Borrower shall fail to obtain the Hedge in accordance with the terms and provisions of Section 7.45. Borrower shall fail to perform any of its obligations under any agreement relating to any Hedge or Hedge Documents following the expiration of any applicable curative provision.

**8.19** Borrower modifies, amends or terminates the the City Loan Documents, the Seller Loan Documents, the HCD Loan Documents or the Regulatory Agreement(s).

**8.20** Borrower fails to satisfy the conditions to Conversion in accordance with Section 3.2 above on or before the Outside Conversion Date.

The Tax Credit Investor shall have the right to cure any default by Borrower hereunder within the time periods (if any) set forth herein for such cure and Bank agrees to accept such cure as if cured by Borrower.

**9. REMEDIES.** If an Event of Default occurs under this Agreement:

**9.1** Governmental Lender and Bank may exercise any right or remedy that it has under any of the Borrower Loan Documents, or that is otherwise available at law or in equity or by statute (which may be exercised directly or by directing the actions of the Fiscal Agent), and all of Governmental Lender's and Bank's rights and remedies shall be cumulative.

**9.2** Bank shall have the right, in its sole discretion, to enter the Property and take possession of it, whether in person, by agent or by court-appointed receiver, to perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and to collect rents and otherwise protect its collateral and exercise its rights and remedies under the Borrower Loan Documents. If Bank exercises any of the rights or remedies provided in this Section, that exercise shall not make Bank a partner or joint venturer of Borrower. All sums that are expended by Bank in completing the Improvements or in preserving Bank's collateral for the Borrower Loan shall be considered an additional loan to Borrower secured by the Deed of Trust and Security Documents and shall bear interest at the Default Rate.

**9.3** Notwithstanding the exercise of any remedy described above or the existence of any Event of Default, Bank, at its option, may make any Advance or disburse any or all of Borrower's Funds without (a) waiving Bank's right to demand payment of the Borrower Loan, (b) incurring liability to make any other or further Advances, and (c) waiving Bank's right to require compliance with Borrower's covenant to correct any defect in the Improvements or departure from the Plans not approved by Bank.

**10. POWER OF ATTORNEY.** Borrower hereby constitutes and appoints Bank as Borrower's true and lawful attorney in fact with the power and authority, including full power of substitution upon the occurrence and during the continuance of an Event of Default, as follows:

**10.1** To take possession of the Property and complete the Improvements or any Capital Improvements.

**10.2** To use any of Borrower's Funds and any undisbursed proceeds of the Borrower Loan for the purpose of completing the Improvements and for other costs related thereto and/or to use any of the funds in the Capital Improvement Reserve Account for the purpose of completing any Capital Improvements and for other costs related thereto.

**10.3** To make such additions and changes and corrections in the Plans as may be necessary or desirable, as Bank, in Bank's sole discretion, deems proper to complete the Improvements.

**10.4** To employ such contractors, subcontractors, agents, architects, engineers and inspectors as are required to complete the Improvements or any Capital Improvements.

**10.5** To employ security personnel to protect the Property from damage.

**10.6** To pay, settle or compromise all existing bills and claims against Borrower's Funds, the Capital Improvement Reserve Account or any undisbursed proceeds of the Borrower Loan as may be necessary or desirable or as Bank deems proper, in Bank's sole discretion, for the completion of the Improvements or the completion of any Capital Improvements, or for the protection or clearance of title to the Property, or for the protection of Bank's interest with respect thereto.

**10.7** To prosecute and defend all actions and proceedings in connection with the rehabilitation of the Improvements and/or the completion of any Capital Improvements.

**10.8** To record any notices of completion, cessation of labor and other notices that Bank deems necessary to protect any interest of Bank under the provisions of this Agreement, the Deed of Trust, any of the Security Documents, or any other Borrower Loan Document.

**10.9** To execute, acknowledge, and deliver all instruments and documents in the name of Borrower that may be necessary or desirable or as Bank deems proper, in Bank's sole discretion, and to perform any and every act with respect to the rehabilitation of the Improvements and/or the completion of any Capital Improvements that Borrower might perform on Borrower's own behalf.

This Power of Attorney is a power coupled with an interest and cannot be revoked. Any costs or expenses incurred by Bank in connection with any acts performed by Bank under or pursuant to this Section shall be paid by Borrower. If such costs are not paid by Borrower upon demand of Bank, interest shall accrue thereon at the Default Rate. Any such advances made or costs or expenses incurred by Bank shall be secured by the Deed of Trust and Security Documents.

## **11. MISCELLANEOUS.**

**11.1 Disclaimer.** WHETHER OR NOT GOVERNMENTAL LENDER OR BANK ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO GOVERNMENTAL LENDER OR BANK UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER GOVERNMENTAL LENDER NOR BANK SHALL BE LIABLE FOR THE CONSTRUCTION OF, OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT, THE IMPROVEMENTS.

**11.2 Notices.** All notices, demands, requests or other communications (including communications by facsimile transmission or e-mail) provided for or allowed hereunder shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), faxed, or e-mailed to the address given with the signatures at the end of this Agreement. Any such notice shall be deemed to have been received by the addressee, (a) if mailed, on the third day following the date of such mailing, or (b) if faxed or e-mailed, upon telephone or email confirmation of

receipt. Any party may at any time change its address for such notices by delivery or mailing the other parties to this Agreement a notice of such change.

**11.3 Waivers.** Any forbearance, failure or delay by Bank in exercising any right, power or remedy shall not be deemed a waiver thereof and any single or partial exercise of any power, right or remedy shall not preclude any further exercise thereof. No waiver of or consent to any breach of any of the covenants or conditions of this Agreement or any other Borrower Loan Document shall be construed to be a waiver of or a consent to any previous or subsequent breach of the same or any other condition or covenant. No waiver or consent shall be effective under any Borrower Loan Document unless it is in writing and signed by an officer of Bank.

**11.4 Governmental Lender's and Bank's Expenses; Rights of Governmental Lender and Bank.**

**11.4.1** Borrower shall promptly pay to Governmental Lender and Bank, upon demand, with interest thereon from the date of demand at the Default Rate, all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith and arising out of or in connection with the Borrower Loan Documents, including without limitation reasonable attorneys' fees (including the fees and costs of Governmental Lender's, Fiscal Agent's and Bank's in-house counsel and legal staff) and all costs and other expenses paid or incurred by Governmental Lender, Fiscal Agent and Bank in exercising its rights or remedies provided for in this Agreement or any other Borrower Loan Document. If at any time Borrower fails to perform any of its obligations hereunder, Bank shall have the right, but not the obligation, to perform such obligations at the expense of Borrower. The amount of any monies so expended or obligations so incurred by Governmental Lender, Fiscal Agent and Bank, together with interest thereon at the Default Rate, shall be repaid to Governmental Lender, Fiscal Agent and Bank promptly upon demand and payment thereof shall be secured by the Deed of Trust and Security Documents. The obligations of this Section 11.4.1 and those in Section 7.24 (Indemnification) shall remain valid and in effect notwithstanding repayment of the loan hereunder or the Funding Loan Note or termination of this Borrower Loan Agreement or the Funding Loan Agreement.

**11.4.2** Without limiting the generality of the foregoing Section 11.4.1, the Borrower shall pay the Governmental Lender and the Bank all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith and arising out of or in connection with the Borrower Loan Documents, the Funding Loan Notes or the Funding Loan Agreement. These obligations and those in Section 7.24 shall remain valid and in effect notwithstanding repayment of the Borrower Loan or termination of this Agreement or the Funding Loan Agreement.

**11.4.3** Governmental Lender and Bank, and any of Governmental Lender's and Bank's representatives, shall have the right, at any time and from time to time, and without notice, to enter upon the Property, to inspect the Improvements and all materials to be used in the rehabilitation thereof and to examine the Plans and all detailed plans and shop drawings that are or may be kept at the construction site.

**11.5 No Third Party.** This Agreement is made for the sole benefit of Borrower, Governmental Lender, Bank and Governmental Lender's and Bank's successors and assigns, and no other Person shall have any rights or remedies under or by reason of this Agreement or any right to exercise any right or power of Governmental Lender and Bank hereunder or arising from any default by Borrower. Governmental Lender and Bank shall owe no duty whatsoever to any claimant for labor performed or material furnished in connection with the rehabilitation of the Improvements nor any duty whatsoever to apply any undisbursed proceeds of the Borrower Loan to the payment of any such claim or to exercise any right or power of Bank hereunder or arising from any default by Borrower.

**11.6 Time of Essence.** Time is of the essence of this Agreement and every part hereof.



**11.7 Successors and Assigns.** Neither this Agreement nor any right of Borrower to receive any sums, proceeds or disbursements hereunder, may be assigned, pledged, hypothecated, anticipated or otherwise encumbered by Borrower without the prior written consent of Bank. Subject to the foregoing restriction and the restrictions contained in the Deed of Trust, this Agreement shall inure to the benefit of Governmental Lender and Bank and Governmental Lender's and Bank's successors and assigns and shall bind Borrower and Borrower's successors and assigns.

**11.8 Participation or Syndication.** Bank shall have the right, in its sole discretion, to assign all or any part of Bank's rights in the Borrower Loan and under the Borrower Loan Documents or the Funding Loan Documents, either through direct assignment or through participating interests, subject to the provisions of Section 4.3 of the Funding Loan Agreement. Bank is hereby authorized to disclose to any prospective assignee or participant in the Borrower Loan any and all information regarding Borrower, any Loan Party, the Property or the Borrower Loan.

**11.9 Governing Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

**11.10 Entire Agreement.** This Agreement and all other Borrower Loan Documents and the Funding Loan Documents constitute the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all prior written or oral understandings. This Agreement and the other Borrower Loan Documents may be modified, amended or terminated only in writing signed by all parties hereto or thereto.

**11.11 Joint and Several Liability.** If Borrower consists of more than one Person, each shall be jointly and severally liable to Bank for the performance of this Agreement and the other Borrower Loan Documents.

**11.12 Publicity, Signs.** Borrower hereby agrees that Bank, at Bank's expense, may publicize the financing of the Property (including the name of Borrower) and, in connection therewith, may use the project name and address, and a description, photograph or other illustrative drawing of the Property. Borrower hereby grants Bank the right to erect or cause to be erected Bank's sign or signs in size and location desired by Bank on the Property so long as such sign or signs do not interfere with the rehabilitation of the Improvements. Borrower will exercise, and will cause Contractor and subcontractors to exercise, due care to protect said sign or signs from damage.

**11.13 Credit Information and Reports.** Borrower authorizes Bank to release information concerning Borrower's financial condition to suppliers, other creditors, credit bureaus and other credit reporters, and to obtain such information from any third party at any time.

**11.14 Headings.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

**11.15 Severability.** Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

**11.16 Counterparts/Electronic Signatures.** This Agreement and each other Borrower Loan Document may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. Delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image, or other electronic means, shall be effective as delivery of an originally executed counterpart. The words "execution," "signed," "signature," and words of like import in this document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, Electronic Signatures in Global and National Commerce Act, any other similar state laws based

on the Uniform Electronic Transactions Act or the Uniform Commercial Code, and the parties hereto hereby waive any objection to the contrary.

**11.17 USA Patriot Act.** Bank is subject to federal laws to help the government fight money laundering and terrorist financing that require Bank to obtain, verify and record information that identifies Borrower and, when applicable, Borrower's Beneficial Owners. Beneficial Owners for these purposes means any individual holding 25% or more equity ownership of the Borrower, as well as one individual with significant responsibility to control, manage or direct the Borrower (e.g., CEO, CFO, COO, President or similar). This information includes the name, address, date of birth, and other information that will allow Bank to identify Borrower and its Beneficial Owners. By signing this document, Borrower agrees to provide and consents to Bank obtaining, if necessary, from third parties, any and all information reasonably necessary to identify Borrower and its Beneficial Owners.

**11.18 Waiver of Jury Trial.** To the extent permitted by law, in connection with any action or proceeding, whether brought in state or federal court, under this Agreement or any of the Borrower Loan Documents, the Borrower, Governmental Lender and Bank hereby expressly, intentionally and deliberately waive any right they may otherwise have to trial by jury of any Claim (as defined below).

**11.19 Judicial Reference.** If the waiver of jury trial set forth hereinabove is not enforceable under the laws of the state in which the Property is located, then the parties hereby agree that all Claims, including any and all questions of law or fact relating thereto, shall, at the written request of any party, be determined by Reference (as hereinafter defined) as set forth hereinbelow:

**11.19.1 Selection Or Appointment Of Referee.** The Bank and Borrower shall select a single neutral referee, who shall be a retired state or federal judge. In the event that the Bank and Borrower cannot agree upon a referee, the referee shall be appointed by the court.

**11.19.2 Conduct Of Reference.** Except as otherwise provided in this Agreement, the Reference shall be conducted pursuant to the laws of the state in which the Property is located. The referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of the Borrower Loan Documents or Funding Loan Documents. The referee shall report a statement of decision to the court. The Bank and Borrower shall equally bear the fees and expenses of the referee, unless the referee otherwise provides in the statement of decision.

**11.19.3 Provisional Remedies, Self-Help And Foreclosure.** No provision of this Agreement shall limit the right of any party to (i) exercise self-help remedies including, without limitation, set-off, (ii) foreclose against or sell any collateral, by power of sale or otherwise or (iii) obtain or oppose provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference. The exercise of, or opposition to, any such remedy does not waive the right of any party to a Reference pursuant to this Agreement.

**11.19.4 No Decision By Jury.** The parties hereby acknowledge that if a referee is selected or appointed to determine the Claims, then the Claims will not be decided by a jury.

**11.19.5 Miscellaneous.** In the event that multiple Claims are asserted, some of which are not subject to this Section, the parties agree to stay the proceedings of the Claims not subject to this Section until all other Claims are resolved in accordance with this Section. In the event that Claims are asserted against multiple parties, some of whom are not subject to this Section, the parties agree to sever the Claims subject to this Section and resolve them in accordance with this Section.

**11.19.6 Claim.** "Claim" shall mean any claim, cause of action, action, dispute or controversy between or among the parties, whether sounding in contract, tort or otherwise, which arises out of or relates to: (i) any of the Borrower Loan Documents or the Funding Loan Documents; (ii) and negotiations or communications relating to any of the Borrower Loan Documents or the Funding Loan Documents, whether or not incorporated into the Borrower Loan Documents or the Funding Loan

Documents or any indebtedness evidenced thereby; or (iii) any alleged agreements, promises, representations or transactions in connection therewith.

**11.19.7 Reference.** "Reference" shall mean a judicial reference conducted pursuant to this Agreement and in accordance with the laws of the state in which the Property is located, as in effect at the time the referee is selected or appointed.

**11.20 Limitation on Damages.** In the event that punitive damages are permitted under the laws of the state in which the Property is located, the amount thereof shall not exceed a sum equal to three times the amount of actual damages.

**11.21 Exhibits.** All exhibits attached hereto are incorporated herein as if fully set forth within this Agreement.

## **12. LIMITATIONS ON LIABILITY. [CHECK: SUBJECT TO REVIEW/APPROVAL BY GOVERNMENTAL LENDER]**

**12.1 Limitation on Liability of Governmental Lender.** Notwithstanding anything herein or in any other instrument to the contrary, the Governmental Lender shall not be obligated to pay the principal or prepayment price of or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State, nor any public agency or political subdivision of the State, is pledged to the payment of the principal or prepayment price of or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal or prepayment price of and interest on the Funding Loan as the same shall become due, whether by maturity, redemption, acceleration or otherwise, then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal or prepayment price of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**12.2 Waiver of Personal Liability.** No member, officer, agent or employee of the Governmental Lender or any commissioner, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal or prepayment price of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

**12.3 Limitation on Liability of Funding Lender's Officers, Employees, Etc.** Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent and the Funding Lender, nor any of its commissioners, officers, directors, employees or agents shall be liable or responsible for (i) any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or

genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes willful misconduct on the part of the Governmental Lender, or gross negligence or willful misconduct on the part of the Funding Lender.

None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project or the Mortgaged Property. The Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. The Governmental Lender and the Funding Lender are not joint venture partners with the Borrower or with each other in any manner whatsoever. Prior to default by the Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of the Borrower.

Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

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

**[Signatures on following page]**

IN WITNESS WHEREOF, the parties have executed this Construction and Permanent Loan Agreement as of the date and year first above written.

**BORROWER:**

**FILLMORE MARKETPLACE HOUSING PARTNERS, L.P.,**  
a California limited partnership

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

By: \_\_\_\_\_  
Frank Cardone, President

By: \_\_\_\_\_,  
a California limited liability company,  
its managing general partner

By: \_\_\_\_\_,  
a California nonprofit public benefit corporation,  
its manager

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

**Addresses for Notice to Borrower:**

Fillmore Marketplace Housing Partners, L.P.  
c/o Related/Fillmore Marketplace Development Co., LLC  
Attn: Mr. Frank Cardone  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Phone No. (949) 660-7272  
Fax No.(949) 660-7273  
E-mail address: fcardone@related.com

With a copy to:

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

With a copy to:

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

With a copy to:

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With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, CA 90071  
Attn: Lance Bocarsly  
Phone No. (213) 239-8088  
Fax No. (213) 239-0410

**BANK:**

**MUFG UNION BANK, N.A.**

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

Name: Joshua Evju

Title: Director

**Addresses for Notice to Bank:**

MUFG Union Bank, N.A.  
Attn: Manager  
Commercial Real Estate Loan Administration  
145 South State College Blvd., Suite 600  
Brea, CA 92821  
Fax No. (949) 752-8361

With a copy to

MUFG Union Bank, N.A.  
Attn: Joshua Evju  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Fax No. (925) 947-2455  
Phone No. (925) 947-2491  
E-mail address: [joshua.evju@unionbank.com](mailto:joshua.evju@unionbank.com)

**GOVERNMENTAL LENDER:**

CITY AND COUNTY OF SAN FRANCISCO

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

**Address for Notice to Governmental Lender:**

City and County of San Francisco

\_\_\_\_\_

Attn: \_\_\_\_\_



## JOINDER REGARDING DEVELOPMENT FEE

The undersigned hereby acknowledges and agrees that the undersigned shall not be entitled to receive more than (i) [\$770,000] **[CHECK]** of their combined development fee in the aggregate on or prior to the Closing Date, (ii) [\$1,250,000] **[CHECK]** of their combined development fee in the aggregate prior to the Completion Date, (iii) [\$1,900,000] **[CHECK]** of their combined development fee in the aggregate prior to Conversion, (iv) [\$2,270,000] **[CHECK]** of their combined development fee in the aggregate prior to the submission of the placed in service application and cost certification to the Allocation Committee for approval, or (v) [\$2,400,000] **[CHECK]** of their combined development fee in the aggregate prior to receipt of IRS Form 8609 from the Allocation Committee; any portion of such development fee received by the undersigned in excess of such limits shall be remitted to MUFG Union Bank, N.A. to be held as additional collateral for the Borrower Loan and, upon an Event of Default with respect thereto, applied in reduction of amounts outstanding under the Borrower Loan in such amounts and in such order as MUFG Union Bank, N.A. shall elect in its sole and absolute discretion.

[SIGNATURE PAGE FOLLOWS]

**[CHECK: BORROWER TO PROVIDE DEVELOPER  
SIGNATURE BLOCKS]**

**EXHIBIT A  
LEGAL DESCRIPTION**

This **Exhibit A** is attached to and a part of that certain Construction and Permanent Loan Agreement dated March 1, 2021 by and between Fillmore Marketplace Housing Partners, L.P., a California limited partnership, the City and County of San Francisco, and MUFG Union Bank, N.A.

Real property in the City and County of San Francisco, State of California, described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF WEBSTER STREET WITH THE NORTHERLY LINE OF EDDY STREET; RUNNING THENCE NORTHERLY ALONG SAID WESTERLY LINE OF WEBSTER STREET 275 FEET TO THE FORMER SOUTHERLY LINE OF ELLIS STREET, AS LAST SAID STREET EXISTED PRIOR TO THE VACATION OF A PORTION THEREOF BY RESOLUTION NO. 764-81, ADOPTED AUGUST 24, 1981, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; RUNNING THENCE WESTERLY ALONG SAID FORMER SOUTHERLY LINE OF ELLIS STREET 220 FEET TO A POINT DISTANT THEREON 192.50 FEET EASTERLY FROM THE EASTERLY LINE OF FILLMORE STREET; THENCE AT A RIGHT ANGLE SOUTHERLY 275 FEET TO THE NORTHERLY LINE OF EDDY STREET; THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID NORTHERLY LINE OF EDDY STREET 220 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 306 AND ALL OF FORMER FOLGER ALLEY VACATED BY RESOLUTION NO. 479-70, ADOPTED JULY 27, 1970, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

APN: Lot: 001, Block: 0732  
Lot: 002, Block: 0732  
Lot: 003, Block: 0732  
Lot: 004, Block: 0732  
Lot: 005, Block: 0732  
Lot: 006, Block: 0732  
Lot: 007, Block: 0732  
Lot: 008, Block: 0732  
Lot: 009, Block: 0732  
Lot: 010, Block: 0732  
Lot: 011, Block: 0732  
Lot: 025, Block: 0732  
Lot: 026, Block: 0732  
Lot: 027, Block: 0732  
Lot: 028, Block: 0732 and  
Lot: 031, Block: 0732

**EXHIBIT B  
DISBURSEMENT SCHEDULE**

This **Exhibit B** is attached to and a part of that certain Construction and Permanent Loan Agreement dated March 1, 2021 by and between Fillmore Marketplace Housing Partners, L.P., a California limited partnership, the City and County of San Francisco, and MUFG Union Bank, N.A. (the "Agreement"). All terms not defined herein have the meanings given them in the Agreement.

Loan Proceeds in the amount of [\$ \_\_\_\_\_] **[CHECK]**, plus other funds in the amount of [\$ \_\_\_\_\_] **[CHECK]**, are allocated as provided in the Project Budget attached as **Exhibit B-1** to this Agreement.

**1. Total Acquisition.** The portion of the Project Budget allocated for "Total Acquisition" in **Exhibit B-1** hereto, shall be disbursed to or for the benefit or account of Borrower for the payment of the cost of the acquisition of the Property.

**2. Hard Costs.** As rehabilitation of the Improvements progresses, the portion of the Project Budget allocated for "Hard Costs" in **Exhibit B-1** hereto, shall be periodically disbursed to or for the benefit or account of Borrower for the payment of Hard Costs. If Bank shall require, Borrower shall submit to Bank for approval, invoices or other evidence of the amounts of such Hard Costs. Subject to the provisions of the "Subsequent Disbursements" and "Additional Conditions to Advances" subsections in the "LOAN DISBURSEMENT" Section of the Agreement, Bank shall make each such disbursement to Borrower, Contractor or to such Persons as have actually supplied labor, materials or services in connection with the rehabilitation of the Improvements (at Bank's option as to whom and in what amounts payments are to be made), with the percentage to be ninety percent (90%) of the Draw Request submitted by Borrower and approved by Bank. Upon satisfaction of the provisions of the "Final Disbursement" and "Additional Conditions to Advances" subsections in the "LOAN DISBURSEMENT" Section of the Agreement, the remaining ten percent (10%) shall be disbursed to or for the benefit of or account of Borrower upon completion of the Improvements in accordance with the Plans and Governmental Requirements, but only when the statutory lien period has expired or Bank has received an acceptable lien-free title endorsement from the Title Insurer.

**3. Hard Cost Contingency.** The portion of the Project Budget allocated for "Hard Cost Contingency" in **Exhibit B-1** hereto, may be reallocated to other line items as Borrower may, from time to time, request in writing and as such reallocation is approved by Bank, in its sole discretion. The reallocation or depletion of, or the refusal of Bank to increase, reallocate or deplete, the Hard Cost Contingency shall not release Borrower from any of Borrower's obligations under any of the Borrower Loan Documents.

**4. Cash Developer Fee.** The portion of the Project Budget allocated for "Cash Developer Fee" in **Exhibit B-1** hereto, shall be periodically disbursed to or for the benefit or account of Borrower for the payment of the developer fee; provided; that Bank shall not disburse more than (i) [\$770,000] **[CHECK]** of the development fee in the aggregate on or prior to the Closing Date, or (ii) [\$1,250,000] **[CHECK]** of the development fee in the aggregate on or prior to the Completion Date.

**5. Soft Cost Contingency.** The portion of the Project Budget allocated for "Soft Cost Contingency" in **Exhibit B-1** hereto, may be reallocated to other line items as Borrower may, from time to time, request in writing and as such reallocation is approved by Bank, in its sole discretion. The reallocation or depletion of, or the refusal of Bank to increase, reallocate or deplete, the Soft Cost Contingency shall not release Borrower from any of Borrower's obligations under any of the Borrower Loan Documents.

**6. Interest Reserve.** The portion of the Project Budget allocated for "Interest Reserve" in **Exhibit B-1** hereto, shall be disbursed from time to time directly to Bank for the payment of interest which accrues and becomes due under the Borrower Note and under any Hedge Document entered into in connection with

the Borrower Loan. Bank is authorized to charge the Borrower Loan and Borrower's Funds Account directly for such interest payments when due. Each such interest payment shall then be deemed paid in full. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Borrower Loan Documents, including without limitation, the obligation to pay all accrued interest due and owing and the obligation to deposit Borrower's Funds as required by the "BORROWER'S COVENANTS" Section of the Agreement.

At such time as Borrower receives any Net Operating Income from the operation of the Property, Borrower shall pay to Bank, commencing on the first interest payment date specified in the Borrower Note following the month in which Borrower receives such Net Operating Income, an amount equal to the lesser of (i) the interest payment then due and payable under the Borrower Note, and (ii) Net Operating Income for the prior calendar month. Borrower shall make such payment from funds other than undisbursed proceeds of the Borrower Loan. If Bank elects to require Net Operating Income be paid to Bank pursuant to the preceding sentence, to the extent such Net Operating Income is insufficient to pay in full the interest payment then due and payable under the Borrower Note, and provided that (X) Borrower is not then in default under the terms of the Borrower Loan Agreement, Borrower Note, Deed of Trust or any other Borrower Loan Document, (Y) there is then available in the Interest Reserve sufficient funds for such purposes, and (Z) Borrower has delivered timely to Bank an Operating Statement for the preceding calendar month, Borrower shall be entitled to have such shortfall paid by Bank withdrawing from the Interest Reserve an amount equal to such shortfall, whereupon such interest payment shall then be deemed paid in full.

7. **Bank Inspections.** The portion of the Project Budget allocated for "Bank Inspections" in **Exhibit B-1** hereto, shall be periodically disbursed to or for the benefit or account of Borrower for the payment of bank inspections. If Bank shall require, Borrower shall submit to Bank for approval, invoices or other evidence of the amounts of such Bank Inspections.

8. **Total Other Soft Costs.** The portion of the Project Budget allocated for "Total Other Soft Costs" in **Exhibit B-1** hereto, shall be periodically disbursed to or for the benefit or account of Borrower for the payment of the other soft costs of the Project not specifically described in any other line item of the Project Budget. If Bank shall require, Borrower shall submit to Bank for approval, invoices or other evidence of the amounts of such Other Soft Costs.

9. **Method of Disbursement.** Funds disbursed to Borrower under the terms of this Agreement shall be made by wire transfer to [\_\_\_\_\_], ABA # [\_\_\_\_\_] for credit to Account # [\_\_\_\_\_] in the name of Borrower.

10. **Payment Processing.** Borrower agrees to pay Bank's usual and customary fees for non-automated payment processing.

11. **Good Funds Disclosure.** BORROWER ACKNOWLEDGES THAT STATE LAW REQUIRES ANY ESCROW AGENT HANDLING FUNDS IN AN ESCROW CAPACITY (INCLUDING ANY TITLE INSURANCE COMPANY) TO HAVE DEPOSITED INTO ITS ESCROW DEPOSITORY ACCOUNT, PRIOR TO RECORDING A TRANSACTION, IMMEDIATELY AVAILABLE FUNDS REPRESENTING ALL DISBURSEMENTS TO BE MADE BY THE ESCROW AGENT. ACCORDINGLY, WITH RESPECT TO ALL FUNDS TO BE DISBURSED PURSUANT TO THE ABOVE, BORROWER AUTHORIZES BANK TO MAKE SUCH DISBURSEMENT TO THE TITLE INSURER ON THE DATE SPECIFIED BY SAID TITLE INSURER, WHICH DATE MAY BE PRIOR TO THE RECORDING OF THE DEED OF TRUST. INTEREST ON AMOUNTS OUTSTANDING UNDER THE BORROWER NOTE SHALL ACCRUE FROM THE DATE OF DISBURSEMENT, WHICH MAY NOT BE THE DATE OF RECORDING OF THE DEED OF TRUST. TITLE INSURER SHALL SPECIFY THE DATE IT REQUIRES SUCH PROCEEDS (INCLUDING LOAN PROCEEDS) FOR USE IN SAID ESCROW.

[SIGNATURE PAGE FOLLOWS]

This Disbursement Schedule is executed by Borrower and Bank this first day of March, 2021.

**BORROWER:**

**FILLMORE MARKETPLACE HOUSING PARTNERS, L.P.,**  
a California limited partnership

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

By: \_\_\_\_\_  
Frank Cardone, President

By: \_\_\_\_\_,  
a California limited liability company,  
its managing general partner

By: \_\_\_\_\_,  
a California nonprofit public benefit corporation,  
its manager

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

**BANK:**

MUFG UNION BANK, N.A.

By: \_\_\_\_\_  
Name: Joshua Evju  
Title: Director

**EXHIBIT B-1  
PROJECT BUDGET**

This **Exhibit B-1** is attached to and a part of that certain Construction and Permanent Loan Agreement dated March 1, 2021 by and between Fillmore Marketplace Housing Partners, L.P., a California limited partnership, the City and County of San Francisco, and MUFG Union Bank, N.A.

**[TO BE INSERTED]**

**EXHIBIT C  
SPECIAL CONDITIONS**

1. The following representations and warranties are incorporated by reference in Section 6 of this Agreement:

(a) The Project is located wholly within the City and County of San Francisco, which is within the jurisdiction of the Governmental Lender.

(b) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Funding Loan Notes. The Borrower intends to utilize the Project as multifamily rental housing during the Qualified Project Period (as defined in the Tax-Exempt Regulatory Agreement).

(c) Not in excess of two percent (2%) of the proceeds of the Borrower Loan will be used to pay costs of issuance of the Funding Loan Notes.

(d) The acquisition, rehabilitation and operation of the Project in the manner presently contemplated and as described herein and in the Tax-Exempt Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be rehabilitated and operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(e) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Governmental Lender for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Governmental Lender in any manner except to issue the Funding Loan Notes in order to provide funds for the Borrower Loan.

(f) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project.

(g) The Borrower has contacted all "related persons" thereof (within the meaning of Section 147(a) of the Code) of which it is aware; and none of them shall, at any time, pursuant to any arrangement, formal or informal, acquire any interest in the Funding Loan Notes in an amount related to the amount of the Borrower Loan.

(h) All of the proceeds from the Borrower Loan plus any income from the investment of the proceeds of the Borrower Loan will be used to pay or reimburse the Borrower for Project costs, and at least 97% of the proceeds of the Borrower Loan will be used to pay or reimburse the Borrower for Good Costs (as defined in the Tax Certificate) and less than 25% of such amount will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Borrower Loan are expended so as to cause the Funding Loan Notes to constitute a "qualified residential rental bond" within the meaning of Section 142(d) of the Code.

(i) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on the Funding Loan Notes to be included in the gross income of the owners thereof for purposes of federal income taxation.



(j) The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the weighted average maturity of the Funding Loan Notes does not exceed 120 percent of the average reasonably expected remaining economic life of the facilities being financed with the proceeds of the Funding Loan Notes.

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

2. The following covenants of Borrower are incorporated by reference in Section 7 of this Agreement:

(a) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Governmental Lender or otherwise, any action with respect to the proceeds of the Funding Loan Notes which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Funding Loan Notes would have caused the Funding Loan Notes to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(b) Payment of Governmental Lender Fees and Expenses. The Borrower covenants to pay all third-party fees of the financing, including, but not limited to the following:

(i) All taxes and assessments of any type or character charged to the Governmental Lender or to the Bank affecting the amount available to the Governmental Lender or to the Bank from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Bank and taxes based upon or measured by the net income of the Bank; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Authority or the Bank, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Governmental Lender or the Bank;

(ii) The annual fee of the Governmental Lender, payable as set forth in Section 20 of the Tax-Exempt Regulatory Agreement, and, within fifteen (15) days after receipt of request for payment thereof, the reasonable fees and expenses of the Governmental Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender to act on its behalf in connection with this Agreement, the Tax-Exempt Regulatory Agreement, the Funding Loan Notes or the Funding Loan Agreement, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Funding Loan Notes or in connection with any litigation which may at any time be instituted involving this Agreement, the Tax-Exempt Regulatory Agreement and any other Borrower Loan Documents, the Funding Loan Notes or the Funding Loan Agreement or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing; and

(iii) These obligations and those in Section 7.24 shall remain valid and in effect notwithstanding repayment of the Borrower Loan or termination of this Agreement or the Funding Loan Agreement.

(c) Tax Exempt Status of the Funding Loan Notes.

(i) It is the intention of the Governmental Lender, Bank and the Borrower that interest on the Funding Loan Notes shall be and remain excludable from gross income for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Bank and the Governmental Lender.

(ii) The Borrower covenants and agrees that it will not knowingly and willingly use or permit the use of any of the funds provided by the Governmental Lender or the Bank hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Funding Loan Notes that would, or take or omit to take any other action that would cause the Funding Loan Notes to be an "arbitrage bond" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder.

(iii) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section it is necessary to restrict or to limit the yield on the investment of any moneys held under the Funding Loan Agreement, the Borrower Loan Documents or otherwise by the Bank, the Borrower shall determine the limitations and so instruct the Bank in writing and cause the Bank to comply with those limitations.

(iv) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Tax Counsel or of counsel to the Governmental Lender, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code as it pertains to the Funding Loan Notes.

(v) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(vi) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions of this Borrower Loan Agreement and of the Tax-Exempt Regulatory Agreement, and that in any event, the requirements of this Borrower Loan Agreement and the Tax-Exempt Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(vii) The Borrower shall not purchase, and shall use its best efforts to prevent any guarantor of the Borrower from purchasing, pursuant to an arrangement, formal or informal, any interest in the Funding Loan Notes in an amount related to the amount of the Borrower Loan.

(viii) The Borrower will use due diligence to complete the acquisition and rehabilitation of the Project and reasonably expects to fully expend the portion of the Borrower Loan by the Completion Date.

(ix) The Borrower will calculate or cause to be calculated, at the times required by the Code, any rebate due to the federal government in respect of the Funding Loan Notes, and will make timely payment of any rebate amount due to the federal government.

(d) **Federal Guarantee Prohibition.** The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Funding Loan Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(e) **Limited Liability.** The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, the Funding Loan Notes or any of the other Borrower Loan Documents, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement. All obligations and any liability of the Governmental Lender shall be further limited as provided in Sections 4.1, 5.2 and 6.7 of the Funding Loan Agreement.

**EXHIBIT D  
CONDITIONS TO CONVERSION**

The following shall be the conditions precedent to conversion:

Conditions to Conversion	Check When Satisfied
(a) The final disbursement shall have occurred.	<input type="checkbox"/>
(b) All indebtedness incurred by the Borrower in connection with the Project, including, but not limited to, the Borrower Loan and any subordinate financing, shall be completely funded and, if applicable, converted to permanent financing.	<input type="checkbox"/>
(c) No material adverse change has occurred in the financial condition of Borrower or any other Loan Party, as evidenced by current Financial Statements provided by Borrower to Bank.	<input type="checkbox"/>
(d) All representations and warranties made by Borrower in the Borrower Loan Documents and the Funding Loan Documents shall be true and correct in all material respects on and as of the Conversion Date as if made on and as of the Conversion Date (and, if required by Bank, Bank shall have received a certificate of Borrower to that effect).	<input type="checkbox"/>
(e) The Improvements shall not have been materially injured or damaged by fire or other casualty unless the injury or damage has been fully repaired to the satisfaction of the Bank.	<input type="checkbox"/>
(f) Bank shall have received (A) such endorsements to the Title Policy as Bank may require which shall insure that the Improvements have been completed free of all mechanic's and materialmen's liens or claims thereof (or, if such lien has been filed, such lien has been bonded over, released or discharged to the satisfaction of Bank), or (B) such additional title policies with endorsements as Bank may require, with a liability limit of not less than the principal amount of the Borrower Loan, issued by Title Insurer, with coverage and in form satisfactory to Bank, insuring Governmental Lender's and Bank's interest under the Deed of Trust as a first lien on the Property, excepting only such items as shall have been approved in writing by Bank.	<input type="checkbox"/>
(g) Borrower delivers to Bank fully executed copies of any amendments or assignments affecting the formation documents of Borrower and, if applicable, its constituent general partners or members, to the extent not previously provided to and approved by Bank.	<input type="checkbox"/>
(h) Borrower provides Bank with current evidence of the insurance coverage required pursuant to this Agreement, provided that Borrower need not provide evidence of course of construction insurance and Borrower shall in addition provide evidence of business interruption and/or rental interruption insurance, as applicable.	<input type="checkbox"/>
(i) Bank shall have received the Paydown Amount in cash or current funds.	<input type="checkbox"/>

Conditions to Conversion		Check When Satisfied
(j)	During each month of the three-month period immediately preceding the Conversion Date; at least ninety percent (90%) of the Units within the Property shall have been leased to, and occupied by, third-party residential tenants under Acceptable Unit Leases executed by Borrower in strict compliance with the terms and conditions of this Agreement, the City Loan Documents, the Seller Loan Documents, the HCD Loan Documents and the Regulatory Agreements.	<input type="checkbox"/>
(k)	The Improvements shall have been completed in substantial accordance with the Plans free and clear of all liens other than Permitted Liens and Bank shall have received, to the extent applicable, copies of the final certificates of occupancy for each Unit within the Property.	<input type="checkbox"/>
(l)	As of the Conversion Date, no Event of Default and no other event or condition that, with the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing.	<input type="checkbox"/>
(m)	If required by Bank, a current survey of the Real Property, including dimensions and delineation of all the Improvements and location of all easements thereon, certified to and satisfactory to Bank and Title Insurer.	<input type="checkbox"/>
(n)	Guarantor has executed and delivered to Governmental Lender and Bank the Indemnity Agreement.	<input type="checkbox"/>
(o)	During each month of the three-month period immediately preceding the Conversion Date, the Debt Coverage Ratio for the Property shall have been at least 1.15 to 1.00.	<input type="checkbox"/>
(p)	Borrower shall have established with Bank the Capital Improvement Reserve Account and collaterally assigned such account to Bank.	<input type="checkbox"/>
(q)	Borrower shall have paid to Bank all reasonable costs and expenses incurred by Bank and Fiscal Agent in connection with the Conversion.	<input type="checkbox"/>
(r)	If requested by Bank, (i) Tax Credit Investor shall have executed and delivered to Bank an estoppel certificate in form and substance reasonably acceptable to the Bank, which shall contain such certifications as Bank shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, (ii) the City shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the City Loan Documents, (iii) Seller shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the Seller Loan Documents, and (iv) HCD shall have executed and delivered to Bank an estoppel certificate in a form and substance acceptable to Bank, and which shall contain such certifications as Bank shall reasonably require, with respect to the HCD Loan Documents.	<input type="checkbox"/>
(s)	Intentionally Omitted.	<input type="checkbox"/>

Conditions to Conversion		Check When Satisfied
(t)	Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.45, which shall provide for the Borrower to pay a fixed rate of interest no greater than [___%] <b>[CHECK]</b> with respect to Borrower Note A-2 (including the Margin applicable to Borrower Note A-2 during the Permanent Phase), on an amount not more than the entire outstanding principal balance of Borrower Note A-2 as of the Conversion Date, for the period commencing on the Outside Conversion Date through the Maturity Date applicable to Borrower Note A-2.	<input type="checkbox"/>
(u)	Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least [\$12,503,946] <b>[CHECK]</b> in the aggregate.	<input type="checkbox"/>
(v)	The Loan-to-Value Ratio shall not exceed eighty percent (80%).	<input type="checkbox"/>

## EXHIBIT E

### CITY CONTRACTING PROVISIONS

#### [CHECK: SUBJECT TO REVIEW/APPROVAL BY GOVERNMENTAL LENDER]

The following provisions shall apply to this Borrower Loan Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit E shall have the meanings given in this Borrower Loan Agreement. For purposes of this Exhibit, "Contractor" shall mean each of Borrower and Funding Lender.

**1. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City and County of San Francisco ("City") for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at [http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**2. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**3. Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**4. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**5. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**6. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**7. Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**8. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**9. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been



resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**10. Earned Income Credit (EIC) Forms.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**11. Local Business Enterprise Utilization; Liquidated Damages**

**a. The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**b. Compliance and Enforcement**

1) If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

**12. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such Contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Contractor 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**13. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

**15. Drug-Free Workplace Policy.** Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**16. Compliance with Americans with Disabilities Act.** Contractor 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 the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons 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 Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**17. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**18. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**19. Requiring Minimum Compensation for Covered Employees**

**a.** Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

**b.** The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

**c.** Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

## **20. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these

remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

**d.** Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

**e.** Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

**f.** Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

**g.** Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

**h.** Contractor shall keep itself informed of the current requirements of the HCAO.

**i.** Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

**j.** Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

**k.** Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

**l.** City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

**m.** If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**21. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**22. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the

performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**23. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**24. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.



CONSTRUCTION AND PERMANENT LOAN AGREEMENT  
(MULTIFAMILY HOUSING BACK TO BACK LOAN PROGRAM)

by and among

CITY AND COUNTY OF SAN FRANCISCO

as Governmental Lender,

MUFG UNION BANK, N.A.,

as Bank

and

FILLMORE MARKETPLACE HOUSING PARTNERS, L.P.,  
a California limited partnership,

as Borrower

Dated: March 1, 2021

Relating to

[\$ \_\_\_\_\_] **[CHECK]**

City and County of San Francisco  
Multifamily Housing Revenue Notes  
(Fillmore Marketplace Apartments)  
Series 2021 A-1, A-2 and A-3

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APPENDIX I

DEFINITIONS

As used in the agreement to which this Appendix I is attached, and as used in this Appendix I, the following terms shall have the indicated meanings:

“Allocation Committee” shall mean the California Tax Credit Allocation Committee and any successor governmental agency appointed to carry out the obligations of the Allocation Committee.

“Bank” shall mean MUFG Union Bank, N.A., acting in its capacity as holder of the Funding Loan Note and as assignee of and agent for the Governmental Lender pursuant to the Funding Loan Agreement, its successors and assigns.

“Borrower” shall mean Fillmore Marketplace Housing Partners, L.P., a California limited partnership.

“Borrower Loan” shall mean the [\$\_\_\_\_\_] **[CHECK]** construction and permanent loan to be made by Governmental Lender to Borrower pursuant to the Borrower Loan Agreement.

“Borrower Loan Agreement” shall mean the Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program) dated March 1, 2021, executed by Borrower, Governmental Lender and Bank.

“Borrower Loan Documents” shall mean the Borrower Loan Agreement, the Borrower Note, the Deed of Trust and all other documents evidencing, securing or pertaining to the Borrower Loan.

“Borrower Note” shall mean collectively, Borrower Note A-1 and Borrower Note A-2.

“Borrower Note A-1” shall mean the Promissory Note A-1 (Tax Exempt - Construction) (Multifamily Housing Back to Back Loan Program) in the amount of [\$\_\_\_\_\_] **[CHECK]** dated March 1, 2021 and executed by Borrower in favor of Governmental Lender.

“Borrower Note A-2” shall mean the Promissory Note A-2 (Tax Exempt - Permanent) (Multifamily Housing Back to Back Loan Program) in the amount of [\$\_\_\_\_\_] **[CHECK]** dated March 1, 2021 and executed by Borrower in favor of Governmental Lender.

“Code(s)” shall mean the Internal Revenue Code of 1986, as amended from time to time, or the corresponding provisions of any successor federal income tax law and, if applicable, the California Revenue and Taxation Code, as amended from time to time, or the corresponding provisions of any successor state income tax law. Any reference to a particular provision of the Code(s) shall include any amendment of such provision or the corresponding provision of any successor federal income tax law or state income tax law.

“Deed of Trust” shall mean that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction and Permanent Trust Deed) (Multifamily Housing Back to Back Loan Program) of even date of the Borrower Note, executed by Borrower for the benefit of Governmental Lender and Bank and encumbering the Property.

“Final Reservation” shall mean that certain Final Reservation Letter to be issued by the Allocation Committee relating to the allocation of the Tax Credits.

“Fiscal Agent” shall mean [\_\_\_\_\_] **[CHECK]**, and its successors and assigns, under the Funding Loan Agreement.

“Funding Loan” shall mean the loan in the maximum amount of [\$\_\_\_\_\_] **[CHECK]** made by Bank to Governmental Lender pursuant to the Funding Loan Agreement.

“Funding Loan Agreement” shall mean the Funding Loan Agreement among the Governmental Lender, the Bank and Fiscal Agent in connection with the issuance of the Funding Loan Note.

“Funding Loan Documents” shall mean the Funding Loan Agreement, the Funding Loan Note and all other documents evidencing, securing or pertaining to the Funding Loan.

“Funding Loan Note” shall mean collectively, (i) that certain City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021 A-1 executed by Governmental Lender in favor of Bank in the principal amount of [\$\_\_\_\_\_] **[CHECK]** and (iii) that certain City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021 A-2 executed by Governmental Lender in favor of Bank in the principal amount of [\$\_\_\_\_\_] **[CHECK]**.

“General Partner(s)” shall mean collectively, Related/Fillmore Marketplace Development Co., LLC, a California limited liability company, and [\_\_\_\_\_, a \_\_\_\_\_] **[CHECK]**.

“Governmental Lender” shall mean the City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California.

“Improvements” shall mean a one hundred twenty (120) unit affordable apartment project, including two (2) property manager’s units, and other related appurtenances to be rehabilitated on the Property.

“Partnership Agreement” shall mean that certain Amended and Restated Agreement of Limited Partnership of Borrower.

“Preliminary Reservation” shall mean that certain Reservation Letter (Tax Exempt) dated September 16, 2020, issued by the Allocation Committee.

“Property” shall mean certain real property located in the City of San Francisco, County of San Francisco, State of California, as more particularly described in the Deed of Trust.

“Project” shall mean the Property and the Improvements.

“Tax Credit Investor” shall mean [\_\_\_\_\_] **[CHECK]**, and its permitted successors and assigns.

“Tax Credits” shall mean low income housing tax credits allocated under Section 42 of the Internal Revenue Code of 1986, as amended, pursuant to the terms of the Tax Credit Allocation Documents.

“Tax Credit Allocation Documents” shall mean the Tax Credit Application, the Preliminary Reservation, the Final Reservation and such other documents as have or may be issued by the Allocation Committee from time to time with respect to the Tax Credits.

“Tax Credit Application” shall mean the 2020 Low-Income Housing Tax Credit Application submitted to the Allocation Committee to apply for Tax Credits with respect to the Project.



Borrower's address for purposes of notices is as follows:

Fillmore Marketplace Housing Partners, L.P.  
c/o Related/Fillmore Marketplace Development Co., LLC  
Attn: Mr. Frank Cardone  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Phone No. (949) 660-7272  
Fax No.(949) 660-7273  
E-mail address: fcardone@related.com

With a copy to:

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With a copy to:

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With a copy to:

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With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, CA 90071  
Attn: Lance Bocarsly  
Phone No. (213) 239-8088  
Fax No. (213) 239-0410

Tax Credit Investor's address for purposes of notices is as follows:

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With a copy to:

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

General Partner(s)' address for purposes of notices is as follows:

Related/Fillmore Marketplace Development Co., LLC  
Attn: Mr. Frank Cardone  
18201 Von Karman Avenue, Suite 900  
Irvine, California 92612  
Phone No. (949) 660-7272  
Fax No.(949) 660-7273  
E-mail address: fcardone@related.com

and

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

Governmental Lender's address for purposes of notices is as follows:

City and County of San Francisco  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Squire Patton Boggs (US) LLP  
275 Battery Street, Suite 2600  
San Francisco, California 94111  
ATTN: Nathan A. Treu, Principal

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APN: Lot: 001, Block: 0732; Lot: 002, Block: 0732; Lot: 003, Block: 0732; Lot: 004, Block:  
0732; Lot: 005, Block: 0732; Lot: 006, Block: 0732; Lot: 007, Block: 0732; Lot: 008, Block:  
0732; Lot: 009, Block: 0732; Lot: 010, Block: 0732; Lot: 011, Block: 0732; Lot: 025, Block:  
0732; Lot: 026, Block: 0732; Lot: 027, Block: 0732; Lot: 028, Block: 0732 and Lot: 031, Block:  
0732

Property Address: 1223 Webster Street, San Francisco, California

REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

FILLMORE MARKETPLACE HOUSING PARTNERS, L.P.

Dated as of March 1, 2021

Relating to:

City and County of San Francisco  
Multifamily Housing Revenue Notes  
(Fillmore Marketplace Apartments)  
Series 2021A-1 and Series 2021A-2

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## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the “Regulatory Agreement”) is made and entered into as of March 1, 2021, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties and obligations, the “City”) acting by and through the Mayor’s Office of Housing and Community Development, and FILLMORE MARKETPLACE HOUSING PARTNERS, L.P., a California limited partnership (the “Owner”), owner of a fee simple interest in the land described in Exhibit A attached hereto.

### RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as now in effect and as may be amended and supplemented (collectively, the “Act”), the City is authorized to issue revenue bonds, notes and other evidences of indebtedness to finance development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the execution and delivery of multifamily housing revenue notes under the Act in connection with the acquisition and rehabilitation of an affordable multifamily residential rental housing project located on the site described in Exhibit A hereto and to be known as Fillmore Marketplace (the “Project”), which Project shall be subject to the terms and provisions hereof; and

C. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City is entering into a Funding Loan Agreement (the “Funding Loan Agreement”) with MUFG Union Bank, N.A. (the “Funding Lender”) pursuant to which the Funding Lender (i) will advance funds (the “Funding Loan”) to or for the account of the City, and (ii) the City will apply the proceeds of the Funding Loan to make one or more loans (collectively, the “Borrower Loan”) to the Owner to finance the acquisition and rehabilitation of the Project; and

D. WHEREAS, in furtherance of the purposes of the Act and to evidence its obligation to make the payments due to the Funding Lender under the Funding Loan, the City is executing and delivering to the Funding Lender its note designated “City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021A-1” and its note designated “City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021A-2” (collectively, the “Note”) pursuant to a Resolution adopted by the City on \_\_\_\_\_, 2021 (the “Resolution”); and

E. WHEREAS, simultaneously with the delivery of this Regulatory Agreement, the City and the Owner will enter into a Borrower Loan Agreement dated as of the date hereof (the “Borrower Loan Agreement”), whereby the City will make the Borrower Loan to the Owner and the Owner agrees to make loan payments to the City in an amount which will be sufficient to

enable the City to repay the Funding Loan and to pay all costs and expenses related thereto when due;

F. WHEREAS, City hereby certifies that all things necessary to make the Note, when executed and delivered as provided in the Resolution, the valid, binding and limited obligations of the City have been done and performed, and the execution and delivery of the Note, in all respects have been duly authorized; and

G. WHEREAS, the Code (as defined herein) and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain respects and in order to ensure that the Project will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act, the City and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition and rehabilitation of the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the City and the Owner agree as follows:

1. Definitions and Interpretation. Capitalized terms used herein have the meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

“Act” - The Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and, as applicable, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented.

“Adjusted Income” - The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the Housing Act, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

“Administrative General Partner” – Fillmore Marketplace Development Co., LLC, a California limited liability company and any of its successors that have been admitted as a partner in Owner in accordance with the Owner’s Governing Agreement, together with its successors and assigns.

“Affiliated Party” - A Person whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) a Person who together with the Owner are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein), (c) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (d) an S corporation and each of its

shareholders (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Annual Monitoring Report” has the meaning set forth in Section 5(l).

“Area” - The HUD Metro Fair Market Rent Area (HMFA), or the successor area determined by HUD in which the Project is located.

“Authorized Owner Representative” - Any person who at the time and from time to time may be designated as such, by written certificate furnished to the City and the Fiscal Agent containing the specimen signature of such person and signed on behalf of the Owner by the general partner(s) of the Owner, which certificate may designate an alternate or alternates.

“Available Units” - Residential units in the Project (except for not more than one unit set aside for a resident manager) that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the date of the execution and delivery of the Note is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

“Borrower Loan” – The Loan of the proceeds of the Borrower Loan Agreement to provide financing for the acquisition and rehabilitation of the Project.

“Borrower Loan Agreement” – The Borrower Loan Agreement of even date herewith, among the City, the Owner and the Funding Lender pursuant to which the loan of the proceeds of the Note is made to the Owner to provide financing for the acquisition and rehabilitation of the Project.

“CDLAC” - The California Debt Limit Allocation Committee.

“CDLAC Requirements” - The requirements described in Section 26 of this Regulatory Agreement.

“CDLAC Resolution” - The Resolution described in Section 26 of this Regulatory Agreement.

“Certificate of Continuing Program Compliance” - The Certificate with respect to the Project to be filed by the Owner with the City and the Program Administrator, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit D, or such other form as is provided by the City and executed by an Authorized Owner Representative.

“City” - The City and County of San Francisco, California.

“City Median Income” - the “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and Community Development and published annually, based on the unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act



and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being adjusted for family size but unadjusted for high housing costs.

“Closing Date” - The date of the execution and delivery of the Note, March \_\_, 2021.

“Code” - The Internal Revenue Code of 1986, as in effect on the execution and delivery of the Note or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of the execution and delivery of the Note, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Completion Certificate” - The certificate of completion of the rehabilitation of the Project required to be executed by an Authorized Owner Representative and delivered to the City and the Funding Lender by the Owner pursuant to Section 2(e) of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

“Completion Date” - The date of completion of the rehabilitation of the Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

“Costs of Issuance” means the issuance costs for purposes of Section 147(g) of the Code incurred with respect to the issuance of the Note but does not include fees charged by the City with respect thereto.

“CTCAC” - The California Tax Credit Allocation Committee.

“Declaration of Restrictions” – that certain Declaration of Restrictions, dated as March 1, 2021, between the Owner and the City, represented by the Mayor, acting through the Mayor's Office of Housing and Community Development.

“Displaced Tenant Preference Certificate Holder” - A person or household that has been issued a certificate under the Displaced Tenant Preference Program, as further described in the Operational Rules attached as Exhibit J.

“Existing Tenant” - means any Tenant lawfully residing at, or legally entitled to return to, the Site, as of the Closing Date.

“Facilities” - The multifamily buildings, structures and other improvements on the Site to be acquired, constructed, improved, rehabilitated and equipped with the proceeds of the Borrower Loan, and all fixtures and other property owned by the Owner and located on the Site, or used in connection with, such buildings, structures and other improvements. The Facilities include a childcare center.

“Fiscal Agent” – U.S. Bank, National Association, and its successors and assigns.

“Funding Lender” – MUFG Union Bank, N.A. and its successors and assigns.

“Funding Loan” – The loan by the Funding Lender to the City, the proceeds of which are loaned by the City to the Owner pursuant to the Borrower Loan Agreement.

“Funding Loan Agreement” – The Funding Loan Agreement of even date herewith, among the City, the Fiscal Agent and the Funding Lender, pursuant to which the Funding Loan was made.

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

“Housing Authority” - The Housing Authority of the City and County of San Francisco and any of its successors.

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

“HUD” - The United States Department of Housing and Urban Development, its successors and assigns.

“Income Certification Form” – A fully completed and executed Income Certification Form substantially in the form designated in Exhibit B, or such other form as may be provided by the City.

“Inducement Date” – January 17, 2020, the date of adoption of the Inducement Resolution.

“Inducement Resolution” – Resolution No. 06-20 adopted by the Board of Supervisors of the City on the Inducement Date and approved by the Mayor, indicating its intention to issue tax-exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – Raymond James Housing Opportunities Fund 36 L.L.C., and any of its successors that have been admitted as a limited partner in Owner in accordance with the Owner’s Governing Agreement, together with its successors and assigns.

“Low Income Tenant” – Any Tenant in the Project whose Adjusted Income does not exceed sixty percent (60%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code or who fail to be described in Section 42(i)(3)(D) of the Code, such occupants shall not qualify as Low Income Tenants. The determination of a Tenant’s status as a Low Income Tenant shall initially be made by the Owner on the basis of an Income Certification Form (a form of which is attached hereto as Exhibit B) executed by the Tenant upon such Tenant’s occupancy of a Restricted Unit in the Project and upon annual recertification thereafter. In determining if any Tenant is a Low Income Tenant for purposes of any requirement of the City hereunder, the maximum Adjusted Income shall be based on the applicable percentage of the lower of the City Median Income or Median Income for the Area.

“Low Income Units” – The dwelling units in the Project required to be rented to, or designated for occupancy by, Low Income Tenants pursuant to Section 4 of this Regulatory Agreement.

“Managing General Partner” – SFHDC Fillmore Marketplace II LLC, a California limited liability company and/or any other Person that the partners of Owner, with the prior written approval of City and the Funding Lender (to the extent required pursuant to the Loan Documents),

have selected to be a general partner of Owner, and any successor general partner of the Owner, in each case to the extent permitted under the Loan Documents and hereunder.

“Maturity Date” the final maturity date of the Note, as specified in the Funding Loan Agreement.

“Median Income for the Area” – The median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009(a) of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat 2654) or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size and high housing cost area.

“Note” – the City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021A-1 and City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021A-2.

“Owner” – Fillmore Marketplace Housing Partners, L.P., a California limited partnership, and its permitted successors and assigns.

“Operational Rules” – The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities are incorporated by reference in Exhibit J.

“Owner’s Governing Agreement” – The Amended and Restated Agreement of Limited Partnership relating to Owner, by and among the General Partner, the Investor Limited Partner and the Administrative General Partner.

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

“Program Administrator” - A governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on bond financed multifamily housing projects, which shall be the City initially and, at the City’s election, any other person or entity appointed by the City who shall enter into an administration agreement in a form acceptable to the City.

“Project” - The Facilities and the Site.

“Project Costs” - To the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Owner with respect to the rehabilitation of the residential component of the Project, whether paid or incurred prior to or after the Inducement Date, including, without limitation, costs for site acquisition, preparation, the planning of housing and related facilities and improvements, the removal or demolition of existing structures, the rehabilitation of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor’s and Owner’s overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including

reimbursement to any municipality, county or entity for expenditures made for the Project), and interest on financing for the Project.

“Qualified Project Costs” - The Project Costs incurred after the date which is sixty (60) days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during rehabilitation of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in rehabilitating the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof).

“Qualified Project Period” – The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the Project are first occupied and ending on the later of the following:

- (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;
- (b) the first date on which no Tax-Exempt private activity bonds or notes with respect to the Project are Outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates;
- (d) the date that is fifty-five (55) years after the Closing Date; or
- (e) such later date as may be provided in Section 5 or Section 26 hereof.

“Qualified Tenant” – An Existing Tenant or a Very-Low Tenant or a Low Income Tenant.

“Regulations” - The income tax regulations promulgated by the United States Department of the Treasury pursuant to the Code (or its predecessor) from time to time.

“Regulatory Agreement” - This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments hereto or supplements hereof.

“Restricted Unit” – A Low (or Very Low) Income Unit or a Unit occupied by an Existing Tenant. “Section 8” – Section 1437f of the Housing Act, unless explicitly referring to a section of this Regulatory Agreement (e.g., “Section 8 hereof”).

“Security Instrument” – The [Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing], dated as of the date hereof, executed by Owner in favor of the City, and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project.

“Site” - The parcel or parcels of real property described in Exhibit A, which is attached hereto, and all rights and appurtenances thereto.

“SSI” – Supplemental Security Income administered pursuant to P.L. 74-271, approved August 14, 1935, 49 Stat. 620, as now in effect and as it may from time to time hereafter be amended or supplemented.

“State” - The State of California.

“TANF” – The Temporary Assistance for Needy Families program administered pursuant to 42 U.S.C. Sections 601-687.

“Tax Certificate” – The Tax Certificate and Agreement dated as of the Closing Date executed and delivered by the City and the Owner.

“Tax Counsel” – An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the City and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Tax-Exempt” – With respect to the status of interest on the Note the exclusion of interest thereon from gross income of the note holder for federal income tax purposes pursuant to Section 103(a) of the Code (other than interest on any portion of the Note owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code).

“Tenant” – At any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

“Very Low Income Tenant” – Any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(0)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant’s status as a Very Low Income Tenant shall initially be made by the Owner on the basis of the Income Certification Form (a form of which is attached hereto as Exhibit B) executed by the Tenant upon such Tenant’s occupancy of a unit in the Project and upon annual recertification thereafter.

“Very Low Income Unit” - A dwelling unit in the Project required to be rented to, or designated for occupancy by, Very Low Income Tenants pursuant to Section 4 of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender used in this Regulatory Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1 notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

2. Rehabilitation of the Project. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Owner has incurred, or will incur within six (6) months after the Closing Date, a substantial binding obligation to a third party to commence the rehabilitation of the Project, pursuant to which the Owner is or will be obligated to expend at least the lesser of (i) five (5) percent of the aggregate principal amount of the Note or (ii) \$100,000 for the payment of Qualified Project Costs.

(b) The Owner's reasonable expectations respecting the total cost of rehabilitation of the Project and the disbursement of Note proceeds are accurately set forth in the Tax Certificate delivered to the City on the Closing Date.

(c) The Owner will proceed with due diligence to complete the acquisition and rehabilitation of the Project and expects to expend the maximum authorized amount of the Borrower Loan for Project Costs within three (3) years of the Closing Date.

(d) The Owner shall prepare and submit to the City a final allocation of the proceeds of the Note to the payment of Qualified Project Costs, which allocation shall be consistent with the cost certification (as defined in the Owner's Governing Agreement) within 60 days after the Completion Date, but in any event no later than the earlier of (1) 18 months from the placed in service date for the Project, (2) the Maturity Date or (3) the fifth anniversary of the Closing Date.

(e) Within thirty (30) days of the Completion Date, the Owner will submit to the City and the Funding Lender a duly executed and completed Completion Certificate.

(f) Money on deposit in any fund or account in connection with the Note, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owner in a manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code, and the Owner specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Note from being an "arbitrage bond" under the Code.

(g) The Owner (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take any action if such action or omission would in any way cause the proceeds from the sale of the Note to be applied in a manner contrary to the requirements of the Funding Loan Agreement, the Borrower Loan Agreement or this Regulatory Agreement.

(h) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Note, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Note, will result in not less than ninety-seven percent (97%) of all disbursements of the proceeds of the Note having been used to pay or reimburse the Owner for Qualified Project Costs and less than twenty-five (25%) percent of all disbursements having been used to pay for the acquisition of land or any interest therein.

(i) The statements made in the various certificates delivered by the Owner to the City on the Closing Date are true and correct.

(j) All of the amounts received by the Owner from the proceeds of the Note and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Note shall be used to pay Costs of Issuance of the Note.

(k) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt status of the interest on the Note, and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(l) The Owner will take such action or actions as may be necessary, in the written opinion of Tax Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the Tax-Exempt status of the interest on the Note.

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

(n) In accordance with Section 147(b) of the Code, the average maturity of the Note does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities being financed by the Note.

(o) The Owner agrees not to acquire the Note or any portion thereof or interest therein so long as it is the owner or substantial user (within the meaning of the Code) of the Project.

(p) The Owner hereby represents that, as of the Closing Date, not less than 50% of the dwelling units in the Project are occupied.

3. Qualified Residential Rental Property. The Owner hereby acknowledges and agrees that the Project will be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code). The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code and the Owner hereby elects and covenants that it shall comply with Section 142(d)(1)(B) of the Code. To that end, and for the term of this Regulatory Agreement, the Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being acquired and rehabilitated for the purpose of providing affordable multifamily residential rental property, and the Owner shall own, manage and operate the Project as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the residential dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each residential dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (which may be a countertop cooking range), refrigerator and sink.

(c) None of the residential dwelling units in the Project will at any time be used on a transient basis (e.g., subject to leases that are less than thirty (30) days in duration) (including use as a corporate suite), or be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Tax Counsel that the Tax-Exempt status of the interest on the Note will not be adversely affected thereby.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required by (i) this Regulatory Agreement, (ii) any regulatory or restrictive use agreement to which the Project is or becomes subject pursuant to Section 42 of the Code, (iii) any additional tenant income and rent restrictions imposed by any other federal, State or local governmental agencies, and (v) any other legal or contractual requirement not excepted by clauses (i) through (iii) of this subsection, upon receipt by the Owner, the Funding Lender and the City of an opinion



of Tax Counsel to the effect that compliance with such other requirement will not adversely affect the Tax-Exempt status of interest on the Note.

(f) The Site consists of a parcel or parcels that are contiguous and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property (including the portions of the common areas allocated to the Project), as evidenced by the ownership, management, accounting and operation of the Project.

(g) No residential dwelling unit in the Project shall be occupied by the Owner. Notwithstanding the foregoing, if any building in the Project contains five or more residential dwelling units, this Subsection shall not be construed to prohibit occupancy of residential dwelling units in such building by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

(h) The Owner shall not discriminate on the basis of race, creed, religion, color, sex, source of income (*e.g.*, TANF, Section 8 or SSI), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the rehabilitation, operation and management of the Project, except to the extent required hereby.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the City from enforcing the requirements of the Code and the Regulations, or condemnation or similar event, the Owner covenants that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Note or, if permitted under the provisions of the Security Instrument, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 142(d) of the Code and the Regulations.

(j) The Owner agrees to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof such that the Project shall be substantially the same condition at all times as the condition it is in at the time of the completion of the rehabilitation of the Project with the proceeds of the Note, ordinary wear and tear excepted. Notwithstanding the foregoing, the Owner's obligation to repair or rebuild the Project in the event of casualty or condemnation shall be subject to the terms of the Borrower Loan Agreement and the Security Instrument.

(k) The Project has and will continue to have one hundred twenty (120) residential dwelling units, two of which are unrestricted manager's units.

(l) The Owner will not sell dwelling units within the Project.

4. Restricted Units. The Owner hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, the Owner shall comply with the income and rent restrictions of this Subsection 4(a), and any conflict or overlap between any two (2) or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restriction.

(i) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than forty percent (40%) of the total number of the completed units in the Project (excluding the two (2) manager's units), or forty-eight (48) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code who fail to be described in Section 42(i)(3)(D) of the Code, such occupants shall not be qualified Tenants pursuant to this sentence.

(ii) Income and Rent Restrictions Pursuant to the Housing Law. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project, or forty-eight (48) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of the Median Income for the Area; provided, however, that if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code who fail to be described in Section 42(i)(3)(D) of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed (a) one-twelfth (1/12<sup>th</sup>) of the amount obtained by multiplying thirty percent (30%) times sixty (60%) of the Median Income for the Area, (b) less the utility allowance.

(iii) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive than any of the foregoing requirements, the Owner shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Very Low Income Tenant or Low Income Tenant upon initial occupancy shall be denied continued occupancy of a Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

Because all of the units in the Project (except the two (2) manager's units) are required to be Restricted Units pursuant to Section 4(a), hereof, any Available Unit not required to be rented to an Existing Tenant must be rented to or held vacant for a Very Low Income Tenant or Low Income Tenant, including a unit vacated by an Existing Tenant.

(c) Income Certifications. For all occupied Available Units, the Owner will obtain, complete and maintain on file Income Certification Forms for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, together with such information, documentation and certifications as are required therein or by the City, in its discretion, to substantiate the Tenant's income. In addition, the Owner will provide such further information as may be required in the future by the State, CDLAC, the City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Regulations, as the same may be amended from time to time, and in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Fiscal Agent) a Certificate of Continuing Program Compliance (a form of which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Note or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations (Division 9.5 of Title 4 of the California Code of Resolutions).

(e) Recordkeeping. The Owner will maintain complete and accurate records pertaining to the Restricted Units, and will permit any duly authorized representative of the City, the Program Administrator (if other than the City), the Fiscal Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the Project upon reasonable notice during normal business hours, including those records pertaining to the occupancy of the Restricted Units, but specifically excluding any material which may be legally privileged.

(f) Annual Certification to Secretary of Treasury. The Owner shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Fiscal Agent. Failure to comply with the provisions of this Subsection will subject the Owner to penalty, as provided in Section 6652(j) of the Code.

(g) Lease Provisions Regarding Income Certification Reliance. All leases pertaining to Restricted Units do and shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (1) certifies the accuracy of the statements made in the Income Certification Form, (2) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Owner or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification Form or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (3) acknowledges that the Owner has relied on the Income Certification Form and supporting

information supplied by the Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether intentional or otherwise) will be cause for immediate termination of such lease or rental agreement; and (4) agrees that the Tenant's income is subject to annual certification in accordance with Subsection 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Subsection 4(d) above may provide grounds for termination of the lease.

(h) Maintenance of Tenant Lists and Applications. All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business which is unrelated to the Project and shall be maintained, as required from time to time by the Program Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination upon reasonable notice, during normal business hours by representatives of the Project, the City or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the City or the Fiscal Agent shall be a default hereunder.

(i) Tenant Lease Subordination. All tenant leases or rental agreements shall be subordinate to this Regulatory Agreement.

(j) No Encumbrance, Demolition or Non-Rental Residential Use. The Owner shall not take any of the following actions:

(i) other than Permitted Encumbrances or as otherwise previously approved by the City, encumber any portion of the Project or grant commercial leases of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (a) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (b) upon receipt by the Owner, the Fiscal Agent and the City of an opinion of Tax Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Note, or (c) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement;

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project (other than in the ordinary course of business); or

(iii) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(k) Compliance with Regulatory Agreement. The Owner shall exercise reasonable diligence to comply or cause compliance with the requirements of this Regulatory Agreement and shall notify the City within fifteen (15) days and correct any noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, unless such noncompliance is not reasonably susceptible to correction within sixty (60) days, in which event the Owner shall have such additional time as may be reasonably necessary to effect such correction provided the Owner has commenced such correction after discovery and is diligently prosecuting such correction and is keeping the City updated on its progress.

5. Additional Requirements of the City. In addition to the following provisions, the Owner shall comply with the additional rental restrictions of the City as set forth in Declaration of Restrictions. In the event of any conflict or overlap between any two (2) or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restriction.

(a) Minimum Lease Term. The term of the lease for any Restricted Unit shall not be less than one year.

(b) Limitation on Rent Increases. Annual rent increases on an occupied Restricted Unit shall be limited to the percentage of the annual increase in the lower of the City Median Income or the applicable Median Income for the Area for that Restricted Unit. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.

(c) Appointment of Program Administrator. The Owner acknowledges that the City may appoint a Program Administrator (other than the City), at the sole cost and expense of the City, to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. In such event, the Owner shall comply with any reasonable request by the City and the Program Administrator to deliver to any such Program Administrator, in addition to or instead of the City, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection during normal business hours with reasonable notice by the Program Administrator as an agent of the City. The City may change the Program Administrator at its sole and exclusive discretion. The Owner shall have the right to rely on any consent or direction given by the Program Administrator on the same basis as if given by the City.

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than Related Management Company without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Preference In City Affordable Housing Programs. To the fullest extent permitted by law, the Owner shall comply with the City's Preference in City Affordable Housing Programs pursuant to San Francisco Administrative Code Section 47.1, *et seq.* and the Operational Rules attached hereto as Exhibit J, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Sections 42 and 142(d) of the Code, the Act, the CDLAC Resolution, CTCAC regulations or other Federal or State law.

(f) Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar federal, State or local governmental assistance program. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owner shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed two (2) persons for a studio unit; three (3) persons for a one-bedroom unit; five (5) persons for a two-bedroom unit and seven (7) persons for

a three-bedroom unit. The Owner shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all tenants. The Owner shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owner shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and the Owner shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially). Further, Owner shall comply with all applicable notice provisions set forth in the Housing Act prior to terminating any lease to which any Tenant previously certified by the Owner as a Very Low Income Tenant is a party. The Owner acknowledges that (i) federal notice requirements under the Housing Act are distinct from those under State law or City law and the Owner shall comply with all applicable federal, State and local laws in connection with any such notice requirements, and (ii) compliance with the law of one jurisdiction shall not be deemed compliance with the laws of all jurisdictions.

(g) Over-income Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Subsection 4(b), from and after the expiration of the Qualified Project Period, in the event that Owner's certification of the Qualified Tenant's income, pursuant to Subsection 4(c), indicates that the Qualified Tenant's income exceeds one hundred twenty percent (120%) of the lower of the City Median Income or the Median Income for the Area, the Owner shall terminate such lease upon one hundred twenty (120) days prior written notice to the Tenant, and the lease for each Restricted Unit shall contain a statement to the foregoing effect. Notwithstanding the foregoing, the Owner shall not be required to terminate the Qualified Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of the Tenant's lease in this manner.

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to Section 142(d) of the Code or the Act are agreed to by the Owner, in consideration of financial assistance from the City.

(i) Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner, or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Fiscal Agent have received an opinion of Tax Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the Tax-Exempt status of interest on the Note. Any requirement of Section 5 shall be void and of no force and effect if the City, the Fiscal Agent and the Owner receive a written opinion of Tax Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

(j) Extension of Qualified Project Period. Notwithstanding any other provision herein, the Qualified Project Period shall not expire earlier than, and the requirements of this Section 5 shall be in effect until the date that is, fifty-five (55) years after the Closing Date; subject

to those certain provisions, if any, that shall survive and remain in full force and effect following the end of the Qualified Project Period, as specified in Section 11 hereof.

(k) Marketing and Tenant Selection Plan. Owner will market the Restricted Units in accordance with the Marketing and Tenant Selection Plan approved by the City, which shall be substantially in the form attached hereto as Exhibit K.

(l) Annual Reporting. Owner must file with the City annual report forms (the "Annual Monitoring Report") no later than one hundred twenty (120) days after the end of Owner's fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit I as may be updated by the City from time to time.

6. Additional Requirements of State Law. In addition to the requirements set forth herein pursuant to Section 52080 of the Housing Law, the Owner hereby agrees that it shall also comply with each of the following requirements in each case for the term of this Regulatory Agreement as set forth in Section 10 hereof:

(a) Tenants Under Section 8 of the Housing Act. The Owner shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(b) Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times by Qualified Tenants.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

(d) Recordation of Regulatory Agreement. This Regulatory Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the name of the Owner as grantor and to the name of the City as grantee.

(e) Restricted Income Units of Comparable Quality. The Restricted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project. Notwithstanding the foregoing, the parties agree that this Subsection 6(e) shall have no practical effect because one hundred percent (100%) of the units (excluding the two (2) manager's units) in the Project are required to be Restricted Units pursuant to Subsection 4(a).

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure and redemption of the Note, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Subsection 4(a)(iii) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Subsection 4(a)(iii), until the earliest of (i) the

household's income exceeds one hundred-forty percent (140%) of the maximum eligible income specified therein except as specified in Subsection 5(g), (ii) the household voluntarily moves or is evicted for good cause, as defined in the Housing Law, (iii) fifty-five (55) years after the date of the Commencement of the Qualified Project Period, and (iv) the Owner pays the relocation assistance and benefits to households if required by, and as provided in, Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the later of (i) the expiration of the Qualified Project Period or (ii) the date that is fifty-five (55) after the date of commencement of the Qualified Project Period, the Owner shall continue to make available Restricted Units to Qualified Tenants that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households.

(h) Notice and Other Requirements. The Owner shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof, and shall comply with all applicable requirements of Section 65863.11 of the California Government Code.

(i) Syndication of the Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Owner's Governing Agreement. Any subsequent syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City so long as the Owner's Governing Agreement will not be amended, modified or supplemented other than in connection with such syndication, except to reflect such transfer of limited partnership interests and other non-material corrections or adjustments; provided, however, that the Owner shall provide to the City, at least five (5) business days prior to the effective date of any such subsequent syndication, written notice of such syndication certifying that no amendment, modification or supplement to the Owner's Governing Agreement will be effected in connection with such syndication except to the extent necessary to reflect such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any subsequent or other syndication of the Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing and Community Development of the City, which approval shall be granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 6 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the proposed syndication.

7. Indemnification. The Owner hereby releases the City, the Funding Lender and their respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City, the Fiscal Agent and the Funding Lender and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable



attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Borrower Loan or the Note, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Borrower Loan or the Funding Loan or otherwise, including without limitation, any advances of the Borrower Loan or the Funding Loan or any failure of the Fiscal Agent to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Borrower Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any vote, bond, including any secondary market transaction with respect thereto, or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Borrower Loan Agreement, the Funding Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation and management of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, or rehabilitation of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the City or the Funding Lender of their powers or duties under the Borrower Loan Agreement, the Funding Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party; provided, however, that this provision shall not require the Owner to indemnify (i) the Funding Lender from any claims, costs, fees, expenses or liabilities arising from the negligence or willful misconduct of the Funding Lender, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel selected by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto (provided however that if the Indemnified Party is the City, the selection of the counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all attorneys' fees and expenses related thereto), with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest in the Loan, which is not otherwise set forth in the Funding Loan Agreement, the Loan Agreement, the Note or any other agreement relating to the Note.

Additionally, the Owner also shall pay and discharge and shall indemnify and hold harmless the City and the Funding Lender from (i) any lien or charge upon payments by the Owner to the City and the Funding Lender hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City or the Funding Lender shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party, and the payments of all reasonable fees and expenses related

thereto, provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 10 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 7 if such subsequent Owner fails to so indemnify the City, unless at the time of transfer the City has consented to the transfer to the extent such consent is required hereunder.

The provisions of this Section 7 shall survive the term of the Note and this Regulatory Agreement including the terminating of this Regulatory Agent pursuant to the second paragraph of Section 11 herein.

The obligations of the Owner under this Section are independent of any other contractual obligation of the Owner to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owner to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owner. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which they are entitled to indemnification.

In addition thereto, the Owner will pay upon demand all of the reasonable fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

8. Consideration. The City has issued the Note and made the Borrower Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of inducing the Owner acquired, rehabilitated, equip and operate the Project. In consideration of the making of the Borrower Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

9. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Note, and in the Tax-Exempt status of the interest on the Note. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, the Low Income Tenants, the Very Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

10. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project, (except in accordance with the Purchase Option and Right of First Refusal Agreement described in the

Owner's Governing Agreement ) and, except as otherwise provided herein, hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder or pursuant to the aforementioned Purchase Option and Right of First Refusal Agreement) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Borrower Loan Agreement or any document related to the Borrower Loan beyond the expiration of any applicable notice and cure periods, and payment of all fees and expenses of the City and the Fiscal Agent due under any of such documents is current, and (v) an opinion of Tax Counsel to the effect that such transfer will not, in itself, cause interest on the Note to become includable in the gross income of the recipients thereof for federal income tax purposes except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 10 shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than sixty (60) days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer and providing relevant information regarding the proposed transfer.

Notwithstanding the foregoing, the provisions of this Section 10 shall not apply to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner in the Owner (which is instead subject to the term of Section 7(i), (b) the General Partner interest to an affiliate of the General Partner, and (c) the removal and replacement of the Managing General Partner by the Administrative General Partner in accordance with Borrower's Amended and Restated Agreement of Limited Partnership.

11. Term. Subject to the following paragraph of this Section 11, Section 7 hereof and any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the Qualified Project Period.

The terms of this Regulatory Agreement notwithstanding, this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by events such as fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Note is paid in full or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received by the City an opinion of Tax Counsel that such termination will not adversely affect the Tax - Exempt status of the interest on the Note or the exemption from State personal income taxation of the interest on the Note. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City in the event of the occurrence of any of the events described in clause (i) above.

Upon the expiration of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of said expired or terminated terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

12. Covenants to Run With the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire except those terms which are expressly intended to survive after termination. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

13. Burden and Benefit. The City and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the

Owner's legal interest in the Project is rendered less valuable thereby. The City and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income and Very Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Note was issued.

14. Uniformity: Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Site.

15. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days the "Cure Period") after written notice thereof shall have been given by the City to the Owner and the Investor Limited Partner (and a copy of such notice shall also be given to the Funding Lender, provided however that the failure of the City to provide such copy to the Funding Lender shall have no effect on the sufficiency of the notice to the Owner), the City may, as its sole option, extend the Cure Period (provided, however, that the City may at its sole option extend such period if the default is of the nature which would reasonably require more than 60 days to cure and if the Owner provides the City, if requested by the City, with an opinion of Tax Counsel to the effect that such extension will not adversely affect the Tax-Exempt Status of interest on the Note). Upon the expiration of the Cure Period, as the same may be extended or aforesaid, then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Borrower Loan Agreement, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; or

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder, subject, however, to those limits on exercising remedies set forth in Section [7.2] of the Borrower Loan Agreement.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the occurrence of an event of default under this Regulatory Agreement shall not be deemed, under any circumstances whatsoever, to be a default under the Security Instrument except as may be otherwise specified in the Security Instrument.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

16. Recording and Filing. The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the City and County of San Francisco and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

17. Payment of Fees. Notwithstanding any prepayment of the Borrower Loan Agreement and notwithstanding a discharge of the Borrower Loan Agreement or the Note, the Owner shall continue to pay the City's annual administrative fee as calculated and described below. Upon the occurrence of an event of default hereunder, the Owner shall continue to pay to the City compensation for any services rendered by any of them hereunder and reimbursement for all expenses incurred by it in connection therewith.

The Owner shall pay to the City (i) an initial issuance fee of \$\_\_\_\_\_ (which is equal to one quarter of one percent (0.25%) of the maximum principal amount of the Note) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the principal amount of the Note then outstanding, but no less than \$2,500, commencing on the Closing Date and thereafter on each anniversary date of the Closing Date thereafter during the term of this Regulatory Agreement. The first installment of the annual administrative fee is \$\_\_\_\_\_ and the initial issuance fee payment due at Closing Date by the Owner to the City is \$\_\_\_\_\_.

In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Regulatory Agreement, the Owner agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the City, the Funding Lender, the Fiscal Agent, CDLAC and/or the Program Administrator in connection with such action.

18. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

19. Amendments. To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Tax Counsel filed with the City, the Funding Lender and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the Tax-Exempt status of interest on the Note, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, California provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC, and provided further, that any amendment to Sections 3 and 4 thereof shall require an opinion of Tax Counsel filed with the City, the Funding Lender and the Owner, to the effect that such amendment will not adversely affect the Tax-Exempt status of interest on the Note.

20. City Contracting Provisions. The Owner covenants and agrees to comply with the provisions set forth in Exhibit H to this Regulatory Agreement, which is incorporated in and made a part of this Regulatory Agreement by this reference.

21. Notice. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the date personally delivered, or given by telecopier (with proof of transmission and promptly confirmed by mail in the manner described under this Section), or on the second day following the date on which the same have been mailed by first class mail, postage prepaid or the day following delivery by a recognized overnight delivery service, addressed as follows:

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

With copies to: (None of City and County of San Francisco  
which copies shall City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140  
constitute notice) San Francisco, California 94102  
Attention: City Treasurer

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

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

City and County of San Francisco  
Office of Public Finance  
City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 336  
San Francisco, CA 94102  
Attention: Finance Team

If to the Owner: Fillmore Marketplace Housing Partners, LP  
44 Montgomery Street, Suite 1300  
San Francisco, California 94104  
Attention: Ann Silverberg  
Email: asilverberg@related.com

With a copy to: c/o The Related Companies of California, LLC  
18201 Von Karman Avenue, Suite 900  
Irvine, CA 92612j  
Attention: President  
Email: fcardone @related.com

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Nicole Deddens  
Email: ndeddens@bocarslyemden.com

With a copy to (which copy shall not constitute notice): San Francisco Housing Development Corporation  
4439 Third Street  
San Francisco, CA 94124  
Attention:  
Email:  
Telephone:

If to the Investor Limited Partner: Raymond James Housing Opportunities Fund 36 L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Email Address: Steve.Kropf@RaymondJames.com  
Attention: Steven J. Kropf, President

With a copy to (which copy shall not constitute notice): Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan Bernard

If to the Funding Lender: MUFG Union Bank, N.A.  
Loan Administration Department  
145 S. State College Blvd., Suite 600  
Brea, CA 92821  
Attn: Manager

With a copy to: MUFG Union Bank, N.A.  
Community Development Finance Department  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Attn: Manager



With a copy to (which copy shall not constitute notice): Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626

If to the Fiscal Agent: U.S. Bank, National Association  
One California Street, Suite 1000  
Mail Code: SF-CA-SFCT  
San Francisco, CA 94111  
Attention: Global Trust Services/Andrew Fung  
Facsimile: (415) 677-3769  
Email: andrew.fung@usbank.com

With a copy to (which copy shall not constitute notice): Dorsey & Whitney LLP  
600 Anton Boulevard, Suite 200  
Costa Mesa, CA 92626-7655  
Attention: Dennis Wong, Esq.

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

22. Interpretation. The parties to this Regulatory Agreement acknowledge that each party and their respective counsel have participated in the drafting of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any supplement or exhibit hereto.

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

24. Multiple Counterparts. This Regulatory Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

25. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC. The parties hereto acknowledge that the Funding Lender and CDLAC are third-party beneficiaries of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 15 hereof, the terms hereof and the terms of the CDLAC Resolution. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Funding Lender, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement.

Pursuant to Section 52080(k) of the Housing Law, the provisions of Sections 4(a) and Section 6 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Section.

26. CDLAC Requirements. In addition to the other requirements set forth herein and to the extent not prohibited by the requirements set forth in Sections 2 through 6 hereof, the Owner hereby agrees to comply with each of the requirements of CDLAC set forth in this Section 26, as follows:

(a) The Owner shall comply with CDLAC Resolution No. 20-146, adopted on September 16, 2020, attached hereto as Exhibit F (the "CDLAC Resolution") and the CDLAC conditions set forth in Exhibit A thereto (collectively the "CDLAC Requirements"), which conditions are incorporated herein by reference and made a part hereof.

(b) The Owner acknowledges that the City shall monitor the Owner's compliance with the terms of the CDLAC Requirements. The Owner will cooperate fully with the City in connection with such monitoring and reporting requirements as provided herein. Compliance with the terms of the CDLAC Requirements not contained within this Regulatory Agreement, but referred to in the CDLAC Requirements are the responsibility of the Owner to report to the City.

(i) The Owner will prepare and submit to the City a Certification of Compliance II pursuant to the terms of the CDLAC Requirements. The Owner acknowledges that the Owner will prepare and submit to the City, not later than February 1 of each year, until the Owner has submitted to the City and CDLAC a Certification of Compliance II, and on February 1 every three (3) years thereafter until the end of the term of the CDLAC Requirements, a Certification of Compliance II in substantially the form attached hereto as Exhibit G, executed by an Authorized Owner Representative.

(ii) The Owner shall prepare and deliver an "On-going Compliance Self-Certification" form pursuant to the terms of the CDLAC Requirements. The Owner acknowledges that the Owner will prepare and submit to the City, not later than February 1 of each year until the Owner has submitted to the City and CDLAC a Completion Certificate, and on March 1 every three (3) years thereafter until the end of the term of the CDLAC Requirements, a Self-Certificate form in the form provided by CDLAC.

(iii) Within thirty (30) days following the completion of the Project, the Owner will prepare and submit to the City, the Fiscal Agent, CDLAC and the Lender, a Completion Certificate, executed by an Authorized Owner Representative, certifying among other things to the substantial completion of the Project.

(c) Except as otherwise provided in Section 11 of this Regulatory Agreement, this Regulatory Agreement shall terminate on the date fifty-five (55) years after the date on which at least 50% of the units in the Project are first occupied or such later date as the Qualified Project Period shall begin, as required by the CDLAC Requirements.

(d) The Owner shall notify CDLAC in writing of: (i) any change in ownership of the Project, (ii) any change in the issuer of the Bonds, (iii) any change in the name of the Project

or the Project manager, (iv) any default under the Indenture, the Loan Agreement or this Regulatory Agreement, including, but not limited to, such defaults associated with the Tax-Exempt status of the Bonds and the income and rental requirements as provided in this Regulatory Agreement and the CDLAC Requirements, or (v) termination of this Regulatory Agreement.

(e) After the Notes are executed and delivered, the terms and conditions set forth in the CDLAC Resolution shall be enforceable by CDLAC (or in its sole discretion the City) through an action for specific performance or any other available remedy. In addition, after the Notes are issued, changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26 (that are applicable), and #37 of the CDLAC Requirements require CDLAC's Committee or Executive Director's approval (or as otherwise required by CDLAC) and changes to item #2, #13, #17, #27, and #39 thru #41 (that are applicable) of the CDLAC Requirements cannot be altered. Changes to Items #3 thru #5 of Exhibit A of the CDLAC Resolution require no CDLAC Committee or Executive Director's approval but any alterations must be reported to CDLAC staff for the affordability period. Changes to Items #8 and #9 of the CDLAC Requirements require no CDLAC notification and changes to Items #28 thru #36 and #38 (that are applicable) of the CDLAC Requirements require CDLAC Committee or Executive Director's approval only prior to the Project being Placed in Service by the CTCAC. Changes by the Owner or the City to the CDLAC Requirements that more restrictive than those set forth in this Regulatory Agreement shall require the prior approval of the Funding Lender. Compliance with the terms of the CDLAC Requirements not specifically set forth in the Regulatory Agreement are the responsibility of the Owner to report to the City.

27. California Debt and Advisory Commission Reporting Requirements. No later than January 31 of each calendar year (commencing January 31, 2022), the Owner, on behalf of the City, agrees to provide the California Debt and Investment Advisory Commission, by any method approved by such Commission, with a copy to the City, the annual report information required by Section 8855(k)(1) of the California Government Code. This covenant shall remain in effect until the later of the date (i) the Note is no longer outstanding or (ii) the proceeds of the Note and the Funding Loan have been fully spent.

28. No Interference or Impairment of Borrower Loan. Notwithstanding anything herein to the contrary, (i) the occurrence of an event of default under this Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Funding Loan, except as may be otherwise specified in the Funding Loan Agreement, and shall not impair, defeat or render invalid the lien of the Security Instrument and (ii) neither the City nor any other person other than the Funding Lender shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Owner to timely pay the principal of, interest on, or other amounts due and payable under, the Borrower Loan;

(b) interfere with or attempt to interfere with or influence the exercise by the Funding Lender of any of its rights under the Borrower Loan, including, without limitation, the Funding Lender's remedial rights under the Funding Loan Agreement upon the occurrence of an event of default by the Owner under the Borrower Loan; or

(c) upon the occurrence of an event of default under the Borrower Loan, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan,

it being understood and agreed that the City may not, without the prior written consent of the Funding Lender, on account of any default under the Regulatory Agreement seek in any manner, to cause the Borrower Loan to become due and payable, to enforce the Borrower Loan Agreement or to foreclose on the Security Instrument or cause the Funding Lender to declare the principal of the Funding Loan Note, as defined in the Funding Loan Agreement, and the interest accrued on the Funding Loan Note to be immediately due and payable, or cause the Funding Lender to foreclose or take any other action under the Funding Loan Document or any other documents which action would or could have the effect of achieving any one or more of the foregoing actions, events or results.

No person other than the Funding Lender shall have the right to declare the principal balance of the Borrower Loan to be immediately due and payable or to initiate foreclosure or other like action.

All obligations of the Owner under this Regulatory Agreement for the payment of money, including claims for indemnification and damages shall not be secured by or in any manner constitute a lien on the Project, and neither the City nor the Funding Lender shall have the right to enforce such obligations other than directly against the Owner pursuant to Section 7 of this Regulatory Agreement.

IN WITNESS WHEREOF, the City and the Owner have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY AND COUNTY OF SAN FRANCISCO

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

Approved as to Form:  
DENNIS J. HERRERA  
City Attorney

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

[Signatures continue on following page.]



OWNER:

FILLMORE MARKETPLACE HOUSING PARTNERS, L.P.  
A CALIFORNIA LIMITED PARTNERSHIP

By: Fillmore Marketplace Development Co., LLC, a California limited liability company, its Administrative General Partner

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

By: SFHDC Fillmore Marketplace II LLC,  
a California limited liability company,  
its Managing General Partner

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

All that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:

**EXHIBIT B**  
**INCOME CERTIFICATION FORM**

A current version of the CTCAC form may be downloaded from the State Treasurer's website at the following link: <http://www.treasurer.ca.gov/ctcac/compliance/tic.pdf>.



**EXHIBIT C**

**COMPLETION CERTIFICATE**

CITY AND COUNTY OF SAN FRANCISCO  
Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103

**Re: *City and County of San Francisco Multifamily Housing Revenue Notes  
(Fillmore Marketplace Apartments), Series 2021A-1 and Series 2021A-2***

The undersigned (the "Owner") hereby certifies that all aspects of the rehabilitation of the Project (as that term is used in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of March 1, 2021, by and between the City and County of San Francisco and the Owner (the "Regulatory Agreement") were substantially completed and the Project was fully available for occupancy by tenants in the Project as of \_\_\_\_\_, 20\_\_ (the "Completion Date"). Capitalized terms not defined herein shall have the meaning ascribed to them under the Regulatory Agreement.

The undersigned hereby certifies that:

- (a) the aggregate amount disbursed on the Loan to date is \$\_\_\_\_\_;  
and
- (b) all amounts disbursed on the Loan have been applied to pay or reimburse the undersigned for the payment of Project Costs and none of the amounts disbursed on the Loan has been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and
- (c) as shown on the attached sheet (showing the breakdown of expenditures for the Project and the source of the funds which were used to pay such costs), in compliance with Subsection 2(h) of the Regulatory Agreement at least ninety-seven percent (97%) of the amounts disbursed on the Loan have been applied to pay or reimburse the Owner for the payment of Qualified Project Costs. Furthermore, less than twenty-five percent (25%) of the amounts disbursed on the Loan, exclusive of amounts applied to pay the costs of issuing the Note, have been applied to pay or reimburse the Owner for the cost of acquiring land.

[Signatures appear on the next page.]

Date: \_\_\_\_\_, 20\_\_

OWNER:

Fillmore Marketplace Housing Partners, L.P.  
a California limited partnership

By: Fillmore Marketplace Development Co., LLC, a California limited liability company, its Administrative General Partner

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

By: SFHDC Fillmore Marketplace II LLC,  
a California limited liability company,  
its Managing General Partner

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

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

**EXHIBIT D**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Project Name: Fillmore Marketplace

CDLAC Application Number(s): 20-624

CDLAC Resolution Number(s): 20-146

Property Address: 1223 Webster Street, San Francisco, California 94115

Project Completion Date (if completed, otherwise mark N/A): \_\_\_\_\_

Name of Obligation: City and County of San Francisco Multifamily Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021A-1 and Series 2021A-2

The undersigned, being the authorized representatives of Fillmore Marketplace Housing Partners, L.P., a California limited partnership (the "Owner"), hereby certifies that he/she has read and is thoroughly familiar with the provisions of the various documents associated with the Owner's participation in the City and County of San Francisco (the "City") Multifamily Housing Program, such documents including:

1. the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of March 1, 2021 (the "Regulatory Agreement"), between the Owner and the City; and
2. the Borrower Loan Agreement, dated as of March 1, 2021, among the City, the Fiscal Agent and the Owner.

The undersigned further certifies that:

A. There have been no changes to the ownership entity, principals or property management of the Project since the Note was issued and delivered, or since the last certification was provided (as applicable), except as described below:

(If so please attach a request to revise the CDLAC Resolution, noting all pertinent information regarding the change, otherwise state "NONE")

If Project has not yet been placed in service, mark N/A for the balance of the items below:

B. During the preceding twelve (12) months (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the City and (ii) \_\_\_ of the units in the Project were occupied by Qualified Tenants (minimum of one hundred percent (100%), excluding two (2) manager's units).

C. As of the date of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Qualified Tenants, or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Fillmore Marketplace Qualified Tenant vacated such unit, as indicated below:

TOTAL UNITS:

Occupied by Low Income Tenants:

Studio: _____	Unit Nos. _____
1 bedroom units: _____	Unit Nos. _____
2 bedroom units: _____	Unit Nos. _____
3 bedroom units: _____	Unit Nos. _____

Occupied by Very Low Income Tenants:

Studio: _____	Unit Nos. _____
1 bedroom units: _____	Unit Nos. _____
2 bedroom units: _____	Unit Nos. _____
3 bedroom units: _____	Unit Nos. _____

Total percentage occupied by Qualified Tenants: \_\_\_\_\_ (minimum of one hundred percent (100%), excluding two (2) manager's units)

Held vacant for occupancy continuously since last occupied by a Low Income Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by a Very Low Income Tenant:

\_\_\_\_\_%; Unit Nos. \_\_\_\_\_

It hereby is confirmed that each tenant currently residing in a unit in the Project has completed an Income Certification Form in the form approved by the City and that since commencement of the Qualified Project Period, not less than all of the occupied units (excluding the two (2) manager's units) in the Project have been rented to (or are vacant and last occupied by) Qualified Tenants. The undersigned hereby certifies that the Owner is not in default under any of the terms and provisions of the above documents.

D. The units occupied by Qualified Tenants are of similar size and quality to other units and are dispersed throughout the Project.

E Select appropriate certification: [No unremedied default has occurred under this Regulatory Agreement, the Note, the Loan Agreement or the Security Instrument.] [A default has occurred under the \_\_\_\_\_. The nature of the default and the measures being taken to remedy such default are as follows: \_\_\_\_\_.]

F. There has been no change of use for the Project, except as follows: (please describe if any, or otherwise indicate "NONE")

G. Select appropriate certification: The undersigned hereby certifies that the Project [has satisfied all] [except as described below, has satisfied all] of the requirements memorialized in the Exhibit A of the CDLAC Resolution, a copy of which is attached hereto (i.e. qualifying project completion, qualifying depreciable asset purchase, qualifying loan originations, the use of public funds, manager units, income rent restrictions, sustainable building methods, etc., as applicable), and thus has achieved all public benefit requirements (excluding service amenities) as presented to CDLAC.

[Describe any requirements not satisfied: \_\_\_\_\_]

H. As captured in Exhibit A of the CDLAC Resolution, the Project has committed to and is currently providing the following service amenities for a minimum of ten (10) years, on a regular and ongoing basis, which are provided free of charge (with the exception of day care services): [Confirm]

Please check the services that apply or write N/A where appropriate:

\_\_\_\_\_ After-school Programs

\_\_\_\_\_ Educational, health and wellness, or skill building classes

\_\_\_\_\_ Health and Wellness services and programs (not group classes)

\_\_\_\_\_ Licensed Childcare provided for a minimum of twenty (20) hours per week (Monday-Friday)

\_\_\_\_\_ Bona-Fide Service Coordinator/ Social Worker

1) For this reporting period, attached is evidence (i.e. MOUs, contracts, schedules, calendars, flyers, sign-up sheets, etc.) confirming that the above listed services are being provided and have met the requirements of Exhibit A of the CDLAC Resolution.

2) If any of the above services requirements were not met, what corrective action is being taken to comply?

(Please also attach the completed project sponsor certification form as provided in the CDLAC Resolution)

(Please also attach the completed Occupancy and Rent Information form attached hereto)

I. The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief, and the undersigned acknowledges and agrees that the City will be relying solely on the foregoing certifications and accompanying documentation, if any, in making its certification to CDLAC pursuant to Section 5144 of the CDLAC regulations (Division 9.5 of Title 4 of the California Code of Regulations), and agrees to provide to the City such documentation or evidence, in support of the foregoing certifications, as the City or CDLAC may request.

Capitalized terms used in this Certificate and not otherwise defined herein have the meanings given to them in the Regulatory Agreement.

Date: \_\_\_\_\_, 20\_\_

OWNER:

Fillmore Marketplace Housing Partners, L.P.  
a California limited partnership

By: Fillmore Marketplace Development Co., LLC, a California limited liability company, its Administrative General Partner

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

By: SFHDC Fillmore Marketplace II LLC,  
a California limited liability company,  
its Managing General Partner

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

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

**EXHIBIT E**

**CERTIFICATE AS TO COMMENCEMENT OF QUALIFIED PROJECT PERIOD**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

City and County of San Francisco  
Multifamily Housing Revenue Notes (Fillmore Marketplace Apartments),  
Series 2021A-1 and Series 2021A-2

The undersigned, being the authorized representative(s) of Fillmore Marketplace Housing Partners, L.P., a California limited partnership, hereby certifies that: (complete blank information):

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

Fifty percent (50%) of the dwelling units in the Project financed in part from the proceeds of the above-captioned Note were first occupied on \_\_\_\_\_.

[Signatures appear on the next page.]

Date: \_\_\_\_\_, 20\_\_

OWNER:

Fillmore Marketplace Housing Partners, L.P.  
a California limited partnership

By: Fillmore Marketplace Development Co., LLC, a California limited liability company, its Administrative General Partner

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

By: SFHDC Fillmore Marketplace II LLC,  
a California limited liability company,  
its Managing General Partner

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

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



Acknowledged:  
City and County of San Francisco

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

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

**[See Attached.]**

**EXHIBIT G**  
**CERTIFICATE OF COMPLIANCE II (CDLAC RESOLUTION)**

Project Name: Fillmore Marketplace  
*(original project name as well)*

Name of Note Issuer: City and County of San Francisco

CDLAC Application No.: 20-624

Pursuant to Section 13 of Resolution No. 20-146 (the “CDLAC Resolution”), adopted by the California Debt Limit Allocation Committee (the “Committee”) on September 16, 2020, I, \_\_\_\_\_, an Officer of the Project Sponsor, hereby certify under penalty of perjury that, as of the date of this Certification, the above-mentioned Project is in compliance with all of the terms and conditions set forth in the CDLAC Resolution.

I further certify that I have read and understand Section 3 of the CDLAC Resolution, which specifies that once the Note is issued, the terms and conditions set forth in Exhibit A of the CDLAC Resolution shall be enforceable by the Committee through an action for specific performance, negative points, withholding future allocation or any other available remedy (as further explained in Section 13 of the Resolution).

*Please check or write N/A to the items listed below:*

\_\_\_\_\_ The project is currently in the Construction or Rehabilitation phase.

\_\_\_\_\_ The project has incorporated the minimum specifications into the project design for all new construction and rehabilitation projects as evidenced by the attached applicable third party certification (HERS Rater, Green Point Rater or US Green Building Council). For projects under construction or rehabilitation, the information is due following receipt of the verification but in no event shall the documentation be submitted more than two (2) years after the issuance of Note.

\_\_\_\_\_ For projects that received points for exceeding the minimum requirements please attach the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate standards. The compliance form must be signed by a California Association of Building Consultants, Certified Energy Plans Examiner or HERS Rater as applicable.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Officer

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Phone Number

## EXHIBIT H

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

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

1. Nondiscrimination; Penalties.

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

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

(c) **Condition to Contract.** As a condition to the Agreement, the Owner shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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

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

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

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

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

7. Limitations on Contributions. By executing this Agreement, the Owner acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (1) 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, (2) a candidate for that City elective office, or (3) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Owner's board of directors; the Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Owner any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. The Owner certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for such contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. Requiring Minimum Compensation for Covered Employees. The Owner shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Owner is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Agreement, the Owner certifies that it is in compliance with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. The Owner shall comply with San Francisco Administrative Code Chapter 12Q. The Owner shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Owner is subject to the enforcement and penalty provisions in Chapter 12Q.

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

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

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

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

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

13. Reserved.

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

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

16. Assignment. The services provided under the Agreement to be performed by the Owner are personal in character and neither this Agreement nor any duties or obligations may be assigned or delegated by the Owner 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.

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

18. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the City and the Owner, and all 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.

19. Laws Incorporated by Reference. The full text of the laws listed in this Appendix, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix are available at [www.sfgov.org](http://www.sfgov.org) under "Open Gov."

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

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

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



**EXHIBIT I**

**Form of Annual Monitoring Report**

[See Attached]

## **EXHIBIT J**

### **OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE UP ACTIVITIES**

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

[https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery\\_Preferences/Lottery\\_Preferences\\_Manual.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery_Preferences/Lottery_Preferences_Manual.pdf)

**EXHIBIT K**

**MARKETING AND TENANT SELECTION PLAN**

<b>How are utilities paid by the renter?</b>	<p>Renter pays own utility bills directly.</p> <p>-OR-</p> <p>Renter is charged a flat rate of \$___ by a third party vendor for the following utilities: _____ on a monthly basis.</p> <p>-OR-</p> <p>All utilities are paid by the building.</p>
<b>Other fees and/or building rules</b>	Please list any fees for pets, mandatory insurance, bounced check, etc. here.
<b>Contact Person</b>	
<b>Phone</b>	
<b>Email</b>	
<b>Website</b>	
<b>How to obtain an application</b>	
<b>Application deadline</b>	<p>_____, 5pm</p> <p>Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline.</p>
<b>Address to which application should be delivered</b>	<p>Office:  Rental Manager Name:  Address:  City/State/Zip Code:  Attn:</p>
<b>Open House Dates (if applicable)</b>	<p>Date: Time:</p> <p>Date: Time:</p> <p>Date: Time:</p>
<b>Information Session</b>	Enter date, time and location
<b>Lottery</b>	<p>Enter date, time and location</p> <p>(Consider working with City to rent Main Library Koret Auditorium if a larger lottery is anticipated.)</p>

	Applicants do not need to be present at the lottery. Results will be posted to (place your web URL here) within two weeks of the lottery.
<b>Special Note(s)</b>	

**II. Application/Selection Process and Timeline**

The City and County of San Francisco’s requirements for the marketing, application process, lottery process, tenant selection process and tenant screening criteria are defined by Exhibits H, I, J, & K.

[Please complete the following timeline as part of your Marketing Plan]

Timeline of Entire Process (add info as needed)

<b>Task Name</b>	<b>Date</b>
Submittal of Marketing Plan to MOHCD	
Marketing period (3 months)	
Copy of Advertisements to required newspapers	
Applications Available to public	
Informational Workshop #1	
Informational Workshop #2	
Additional Community Outreach (if applicable)	
Application Deadline	
Lottery	
Demographic Summary of all Applicants to MOHCD	

Certificate of Preference count to MOHCD	
Application Review / Approval Process- start date	
Lease-up process / timeline	
Initial MOHCD approvals returned	
First Occupancy	
Construction start date- projected	
Project Closing- projected date	

**III. Document Review**

I/We certify that I/we and all agents involved in the process of renting affordable units have read Exhibits, H, I, J & K.

Representative (sign) \_\_\_\_\_

Representative (print) - \_\_\_\_\_

Title (print) - \_\_\_\_\_

Company (print) - \_\_\_\_\_

Date (print) - \_\_\_\_\_

**Flyer Template  
(Sample)**

**Affordable Homes for Rent in San Francisco**

Exterior Photo	Interior Photo
----------------	----------------

**3 two-bedroom + 3 three-bedroom “Below Market Rate” rental units available  
Bayside Village, 1125 Laurel Court, San Francisco**

- New Units with Modern Design + Amenities
- (2) Two-bedroom units for \_\_\_\_ available to households at or under 55% of median income
- Renter households must earn no more than the income levels listed below:
- 

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
<b>55% of Median Income 2014</b>	\$37,350	\$42,750	\$48,050	\$53,400	\$57,650

**Applications must be received by 5pm on Friday, April 13, 2014** to Smith Rentals, 300 Church St., San Francisco, CA 94114.

Contact Smith Rentals at (415) 282-10000 or john@smithrentals.com for application and information on the units and view the full unit posting at [www.sfmohcd.org](http://www.sfmohcd.org).

Units are monitored through the San Francisco Mayor’s Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit [www.sfmohcd.org](http://www.sfmohcd.org) for program information.

**Information session  
Monday, June 2, 2013, 6pm  
123 Hyde Street**

**Open House Dates**

**June 2, 5-6pm; June 12, 12-1pm; June 25, 5-6pm** All applicants are encouraged to apply. Lottery preference will be given to Residential Certificate of Preference holders<sup>1</sup>, Displaced Tenants<sup>2</sup>, and households that live or work in San Francisco.

Unit #	Bedroom Count	Bath Count	Square Feet	Floor	Rent	Income Maximum	Minimum Monthly Household	Deposit Required

<sup>1</sup> Residential Certificate of Preference holders are households that hold a Residential Certificate of Preference under the San Francisco Redevelopment Agency’s Property Owner and Occupant Preference Program. Contact 415-701-5613 for more information.

<sup>2</sup> Displaced Tenants are those who applied to Mayor’s Office of Housing and Community Development (MOHCD) and is determined by MOHCD to qualify for 1 of 3 categories of tenants formerly residing in San Francisco and who were forced to vacate their residence.

							<b>Income Required</b>	
E113	Studio	1	448	1	\$939	55% of AMI	\$2347.50	\$939
E114	1	1	605	1	\$1066	55% of AMI	\$2665	\$1066
E105	2	1	846	1	\$1192	55% of AMI	\$2980	\$1192



**COP Postcard Template  
(sample)**

**Affordable Homes for Rent in San Francisco**

Exterior Photo	Interior Photo
----------------	----------------

**3 two-bedroom (\$rent amount)+ 3 three-bedroom (\$rent amount) rental units available at Bayside Village, 1125 Laurel Court**

- Renter Households must have a minimum monthly income of \$\_\_\_\_\_
- Renter households must earn no more than the income levels listed below:

Household Size	One Person	Two Person	Three Person	Four Person	Five Person
<b>55% of Median Income 2012</b>	\$39,650	\$45,300	\$51,000	\$56,650	\$61,200



**Side Two:**

**Mayor's Office of Housing & Community Development  
1 South Van Ness, 5<sup>th</sup> Floor  
San Francisco, CA 94103**

**Applications must be received by  
5pm on Friday, April 13, 2012 to:  
Makras Real Estate, 1193 Church St.  
San Francisco, CA 94114.**

For more information & to apply Contact JM Rentals  
(415) 282-8400 or victor@jmrentals.com or  
www.sfmohcd.org

**Information session  
Monday, June 2, 2012, 6pm  
123 Hyde Street**





## PUBLIC DISCLOSURES RELATING TO CONDUIT REVENUE OBLIGATIONS

Pursuant to California Government Code Section 5852.1, the borrower (the "Borrower") identified below has provided the following required information to the City and County of San Francisco (the "City") prior to the City's regular meeting (the "Meeting") of its Board of Supervisors (the "Board") at which Meeting the Board will consider the authorization of conduit revenue obligations (the "Notes") as identified below.

1. Name of Borrower: **Fillmore Marketplace Housing Partners, LP, a California limited partnership.**
2. Board of Supervisors Meeting Date: **February 23, 2021**
3. Name of Bond Issue / Conduit Revenue Obligations: **City and County of San Francisco Multifamily Housing Revenue Notes (Fillmore Marketplace) Series 2021A-1 and 2021A-2.**
4.  Private Placement Lender or Note Purchaser,  Underwriter or  Financial Advisor (mark one) engaged by the Borrower from which the Borrower obtained the following required good faith estimates relating to the Note:
  - (A) The true interest cost of the Notes, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the new issue of Notes (to the nearest ten-thousandth of one percent): **2.102% during construction period; 3.53% during permanent period (rates estimated as of 1/14/21; rate is variable during construction; fixed permanent rate to be set before closing in mid-March 2021).**
  - (B) The finance charge of the Notes, which means the sum of all fees and charges paid to third parties: **\$880,778 (\$318,708 (estimated upfront costs in development budget) plus \$422,070 (issuer/fiscal agent/HCD fees estimated to be paid during the term of the Notes) plus \$140,000 (estimated issuer fee from Note maturity through remainder of the Regulatory Agreement compliance period).**
  - (C) The amount of proceeds received by the public body for sale of the Notes less the finance charge of the Notes described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of the Notes: **\$20,719,909 (\$21,762,000 estimated initial par less \$1,042,091 of estimated capitalized interest and reserves; no other finance charges funded from the Notes).**
  - (D) The total payment amount, which means the sum total of all payments the Borrower will make to pay debt service on the Notes plus the finance charges of the Notes described in subparagraph (B) not paid with the proceeds of such Notes (which total payment amount shall be calculated to the final maturity of such Notes): **\$24,838,351 (consisting of: (a) estimated principal and interest payments of \$23,957,573 and (b) estimated finance charges identified in (B)).**

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

Dated: January 20, 2021



## CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

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915 Capitol Mall, Room 311  
Sacramento, CA 95814  
p (916) 653-3255  
f (916) 653-6827  
cdlac@treasurer.ca.gov  
www.treasurer.ca.gov/cdlac

### MEMBERS

FIONA MA, CPA, CHAIR  
STATE TREASURER

GAVIN NEWSOM  
GOVERNOR

BETTY T. YEE  
STATE CONTROLLER

### EXECUTIVE DIRECTOR

JUDITH BLACKWELL

September 22, 2020

Eric D. Shaw  
Director  
City and County of San Francisco  
1 South Van Ness, 5th Floor  
San Francisco, CA 94103

### RE: RESOLUTION ATTESTING TO THE TRANSFER OF PRIVATE ACTIVITY BOND ALLOCATION

Dear Mr. Shaw:

Enclosed is a copy of Resolution No. 20-146, adopted by the California Debt Limit Allocation Committee (the "Committee") on September 16, 2020, transferring \$21,762,000 of the 2020 State Ceiling on Qualified Private Activity Bonds to the City and County of San Francisco (the "Applicant") for the Fillmore Marketplace Project on a carryforward basis.

The Resolution establishes the terms and conditions under which the allocation has been granted. Please read it carefully and keep a copy in your permanent files. **You are advised to consult bond counsel regarding the making of a carryforward election pursuant to the rules of the Internal Revenue Service.**

The following is additional information pertaining to the use of the allocation for this Project:

1. **Performance Deposit:** Pursuant to Section 5050 of the Committee's Regulations, the performance deposit certified in support of this project (\$100,000) is to remain on deposit until you receive written authorization from the Committee that it may be released. This written release will be provided once the Committee receives the "Report of Action Taken" form indicating that the allocation transferred was used for the issuance of bonds for the specific Project, a copy of the conformed regulatory agreement and the payment of the second installment of the CDLAC filing fee. A copy of the conformed regulatory agreement should be sent electronically to CDLAC@treasurer.ca.gov. The full amount of the deposit will be released upon the Committee's approval if at least 80% of the allocation is used for the issuance of bonds. If an amount less than 80% of the allocation is used to issue bonds, a proportionate amount of the deposit will be subject to forfeiture.


2. **IRS Certification:** The IRS-required certification will be prepared and sent to bond counsel once the Committee receives the "Report of Action Taken" form.

3. **Second Installment of Filing Fee:** **Enclosed is an invoice for this Project.** The invoice attached herein should be considered final, due and payable upon the issuance of bonds.

4. Compliance: The Certification of Compliance II or equivalent form is to be submitted by the Project Sponsor to the Applicant by the Applicant's specified deadline, but no later than March 1st annually until the project's Certificate of Completion has been submitted to the Applicant. Following the submission of the Certificate of Completion or equivalent form to the Applicant, the Certification of Compliance II is to be submitted March 1st every three (3) years thereafter. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification (Self Certification) form must be submitted by the Applicant online every year until the Certificate of Completion has been submitted to the Applicant. After the completion of the project has been reported, the Self Certification will be required to be submitted March 1st every three years thereafter pursuant to Section 5144 of the CDLAC Regulations. Verification to CDLAC of income and rental information is not required in advance of the submission of the Certificate of Completion. A copy of the Certification of Compliance II and the Certificate of Completion forms may be found at this website location: <http://www.treasurer.ca.gov/cdlac>. Failure to submit compliance may result in disqualification from future program participation.

Please consult the Committee's Regulations for a full explanation of the use of allocation. Do not hesitate to contact me should you have questions.

Sincerely,



Genevieve V. Jopanda  
Chief Deputy Treasurer

Enclosures

cc: Omar Cortez, City and County of San Francisco  
Robert Labes, Esq., Squire Patton Boggs (US) LLP  
Lisa Grady, Fillmore Marketplace Housing Partners, L.P.

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

RESOLUTION NO. 20-146

**A RESOLUTION TRANSFERRING A PORTION OF THE 2020 STATE CEILING  
ON QUALIFIED PRIVATE ACTIVITY BONDS AND  
AUTHORIZING THE MAKING OF A CARRYFORWARD ELECTION FOR A  
QUALIFIED RESIDENTIAL RENTAL PROJECT**

**WHEREAS**, the California Debt Limit Allocation Committee ("Committee") has received an application ("Application") from the City and County of San Francisco ("Applicant") for the transfer to the Applicant of a portion of the 2020 State Ceiling on Qualified Private Activity Bonds under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations ("Bonds") for a Project as specifically described in Exhibit A ("Project") (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Regulations of the Committee implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds); and

**WHEREAS**, the Project Sponsor has represented and the Applicant has confirmed in the Application certain facts and information concerning the Project; and

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

**WHEREAS**, it is appropriate for the Committee to make a transfer of a portion of the 2020 State Ceiling On Qualified Private Activity Bonds ("Allocation") in order to benefit such Project described in the Application; and

**WHEREAS**, the Committee has determined that it is appropriate to authorize the Applicant to make an election to carryforward Allocation to calendar year 2020 with respect to the Project described in the Application.

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

**Section 1.** There is hereby transferred to the Applicant authorization to use **\$21,762,000** of the 2020 State Ceiling on Qualified Private Activity Bonds. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of the terms and conditions of Exhibit A are incorporated herein as though set forth in full (this resolution, together with Exhibit A are hereafter referred to collectively as this "Resolution").

**Section 2.** The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds. The Project Sponsor and the Applicant, and all their respective successors and assignees, will be bound by such terms and conditions. The Applicant shall monitor the Project for compliance with the terms and conditions of this Resolution. In addition, the Project shall be subject to the monitoring provisions of California Code of Regulations, Title 4, Section 10337(c) and Section 5220 of the Committee's Regulations.

**Section 3.** Any modification to the Project made prior to the issuance of the Bonds that impacts the resolution must be reported to the Executive Director and, if the Executive Director determines such modification to be material in light of the Committee's Regulations, shall require reconsideration by the Committee before the Allocation may be used for the Project. After Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by the Committee through an action for specific performance or any other available remedy. In addition, after bonds are issued, changes to Items #1, #6, #7, #10 thru #12, #14 thru #16, #18 thru #26, and #37 of the Exhibit A require Committee or Executive Director approval for the term of commitment; changes to item #2, #13, #17, #27, and #39 thru #41 of the Exhibit A cannot be altered; changes to Items #3 thru #5 of the Exhibit A require no Committee or Executive Director approval but any alterations must be reported to CDLAC staff for the affordability period; changes to Items #8 and #9 of the Exhibit A require no CDLAC notification; and changes to Items #28 thru #36 and #38 of the Exhibit A require Committee or Executive Director approval only prior to the Project being Placed in Service by the CA Tax Credit Allocation Committee (TCAC).

**RESOLUTION NO. 20-146**

Page 2 of 3

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

**Section 5.** The transfer of proceeds from the sale of bonds to a project other than the Project subject to this Resolution is allowable only with the prior approval of the Executive Director in consultation with the Chair, except when the Project is unable to utilize any of its allocation and the Applicant is requesting the transfer of the entire Allocation to different project(s). In such case, prior approval of the Committee must be obtained. Any transfer made pursuant to this section may only be made to another/other project(s) of the same issuer that has been previously approved by the Committee.

**Section 6.** The Applicant is authorized to use the Allocation transferred hereby to make a carryforward election with respect to the Project. The Applicant is not authorized to transfer the Carryforward Allocation to any governmental unit in the State other than the Committee.

**Section 7.** The Allocation transferred herein to the Applicant shall automatically revert to this Committee unless the Applicant has issued Bonds for the Project by the close of business on **March 29, 2021**. Upon the discretion of the Executive Director, the expiration may be extended pursuant to the provisions in Chapter 1, Article 8 of the Committee's Regulations.

**Section 8.** Prior to being submitted to the IRS, draft Carryforward Elections must be emailed to CDLAC at [cdlac@treasurer.ca.gov](mailto:cdlac@treasurer.ca.gov) no later than February 3, 2021 for CDLAC approval of election amounts.

**Section 9.** Within twenty-four (24) hours of using the Allocation to issue Qualified Private Activity Bonds, the Applicant shall notify the Committee at [CDLAC@treasurer.ca.gov](mailto:CDLAC@treasurer.ca.gov) that the Allocation has been used. This notice shall identify the Applicant, the project or program, the date the Allocation was used, and the amount of Allocation used.

**Section 10.** Within fifteen (15) calendar days of the Bond closing, the Applicant or its counsel shall formally transmit to the Committee information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a form prescribed by and made available by the Committee.

**Section 11.** Any differences between the amount of Bonds issued and the amount of the Carryforward Allocation granted in Section 1 of this Resolution shall be retained by the Applicant for the period allowed by Section 146(f)(3)(A) of the Internal Revenue Code regarding carryforward elections. Use of any unused Carryforward Allocation shall be in accordance with Section 5132 of the Committee's Regulations regarding carryforward elections.

**Section 12.** The staff of the Committee is authorized and directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain a copy of this Resolution in the Applicant's official records for the term of the Bonds under this Carryforward Allocation or the term of the income and rental restrictions whichever is longer. The Committee staff is further directed to retain a copy of this Resolution in the files of the Committee (or any successor thereto) for the same period of time.

**Section 13.** In consideration of the Allocation transferred to the Applicant and the Project Sponsor, the Applicant and the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Applicant and the Project Sponsor expressly agree that the terms and conditions of this Resolution may be enforced by the Committee through an action for specific performance or any other available remedy, provided however, that the Committee agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, the Applicant and the Project Sponsor shall ensure that the Bond documents, as appropriate, expressly provide that the Committee is a third party beneficiary of the terms and conditions set forth in this Resolution.

**Section 14.** The Certification of Compliance II or equivalent form is to be submitted by the Project Sponsor to the Applicant by the Applicant's specified deadline, but no later than March 1st annually until the project's Certificate of Completion has been submitted to the Applicant. Following the submission of the Certificate of Completion or equivalent form to the Applicant, the Certification of Compliance II is to be submitted March 1st every three years thereafter. In addition, an Annual Applicant Public Benefits and On-going Compliance Self-Certification (Self Certification) form must be submitted by the Applicant online every year until the Certificate of Completion has been submitted to the Applicant. After the completion of the project has been reported, the Self Certification will be required to be submitted March 1st every three years thereafter pursuant to Section 5144 of the CDLAC Regulations. Verification to CDLAC of income and rental information is not required in advance of the submission of the Certificate of Completion. A copy of the Certification of Compliance II and the Certificate of Completion forms may be found at this website location: <http://www.treasurer.ca.gov/cdlac>. Failure to submit compliance may result in disqualification from future program participation.

**Section 15.** The applicant may return the allocation to the Committee without assessment of negative points or forfeiture of the performance deposit if the formal written notification is received by the Committee no later than November 16, 2020 for this project.

**Section 16.** This Resolution shall take effect immediately upon its adoption.

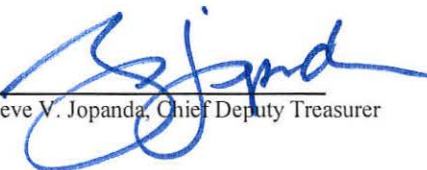
\* \* \*

**CERTIFICATION**

I, Genevieve V. Jopanda, Chief Deputy Treasurer of the California Debt Limit Allocation Committee, hereby certify that the above is a full, true, and correct copy of the Resolution adopted at a meeting of the Committee held in the Jesse Unruh Building, 915 Capitol Mall, Room 587, Sacramento, California 95814, on September 16, 2020 at 11:04 a.m. with the following votes recorded:

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

NOES: None  
ABSTENTIONS: None  
ABSENCES: None

  
\_\_\_\_\_  
Genevieve V. Jopanda, Chief Deputy Treasurer

Date: September 22, 2020



**RESOLUTION NO. 20-146**  
**(QUALIFIED RESIDENTIAL RENTAL PROJECT)**  
**EXHIBIT A**

1. Applicant: City and County of San Francisco
2. Application No.: 20-624
3. Project Sponsor: Fillmore Marketplace Housing Partners, L.P. (Fillmore Marketplace Development Co., LLC & San Francisco Housing Development Corporation)
4. Project Management Co.: Related Management Company
5. Project Name: Fillmore Marketplace
6. Type of Project: Acquisition and Rehabilitation/Family
7. Location: San Francisco, CA
8. Private Placement Purchaser: **MUFG Union Bank, N.A.**  
Cash Flow Bond: **Not Applicable**

All units identified in the CDLAC resolution, including both the Federally Bond-Restricted Units and the Other Restricted Units, will be incorporated into the Bond Regulatory Agreement. Assumptions to be included in the Bond Regulatory Agreement regarding the Other Restricted Units will include the AMI as outlined in the CDLAC resolution, a limitation that tenants pay no more than 30% of their income and 1.5 persons per bedroom occupancy standard to determine the applicable rent.

**Applicable**

9. Public Sale: **Not Applicable**  
Credit Enhancement Provider: **Not Applicable**
10. Total Number of Units: **118** plus **2** unrestricted manager unit(s)
11. Total Number of Restricted Rental Units: **118**
12. The term of the income and rental restrictions for the Project will be at least 55 years from the date 50% occupancy is achieved or when the project is otherwise placed in service.
13. The Regulatory Agreement shall not terminate prior to the end of the CDLAC Resolution affordability term in the event of foreclosure, exercise of power of sale, and/or transfer of title by deed in lieu of foreclosure in connection with a deed of trust directly or indirectly securing the repayment of Cash Flow Permanent Bonds.
14. The Project will utilize Gross Rents as defined in Section 5170 of the Committee's Regulations.  
**Applicable**
15. Income and Rental Restrictions:
  - a. Federally Bond-Restricted Set-aside Units:  
At least **40%** of the total units will be restricted at 60% of the Area Median Income.
  - b. Other Restricted Units  
For the entire term of the income and rental restrictions, the Project will have:  
  
At least **108** Qualified Residential units rented or held vacant for rental for persons or families whose income is at or below 50% of the Area Median Income.  
  
At least **10** Qualified Residential units rented or held vacant for rental for persons or families whose income is at or below 60% of the Area Median Income.



**RESOLUTION NO. 20-146**

**Exhibit A**

Page 2 of 5

16. **10%** of the units will be restricted to households with incomes no greater than 50% of the Area Median Income in accordance with Section 5191 of the Committee's Regulations. These units will be distributed as follows:
- |                        |          |
|------------------------|----------|
| <b>Not Applicable:</b> | <b>0</b> |
| Studios:               | <b>0</b> |
| One-bedroom:           | <b>0</b> |
| Two-bedroom:           | <b>0</b> |
| Three-bedroom:         | <b>0</b> |
| Four-bedroom:          | <b>0</b> |
| Five-bedroom           | <b>0</b> |
17. For substantial renovation projects, a minimum of \$35,000 in hard construction costs, including overhead, profit, and general conditions, will be expended for each Project unit.  
**Applicable**
18. A minimum of \$12,759,784 of public funds will be expended for the Project.  
**Applicable**
19. At a minimum, the financing for the Project shall include a Taxable Tail in the amount of \$0,000. Taxable debt may only be utilized for Project related expenses, not for the cost of issuance for which the Project Sponsor could otherwise have used tax-exempt financing.  
**Not Applicable**
20. If the Project received points for having large family units for the entire term of the income and rental restrictions, the Project will have at least 61 three-bedroom or larger units.  
**Applicable**
21. For a period of fifteen (15) years after the Project is placed in use, the Project will provide to Project residents high-speed Internet or wireless (WiFi) service in each Project unit.  
**Not Applicable**
22. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents an after school program of an ongoing nature on-site, or there must be an after school program available to Project residents within 1/2 mile of the Project except where the Project will provide no cost round trip transportation. The program shall include, but is not limited to: tutoring, mentoring, homework club, art, and recreation activities to be provided weekdays throughout the school year for at least ten (10) hours per week.  
**Not Applicable**
23. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents instructor-led educational, health and wellness, or skill building classes. The classes shall include, but are not limited to: financial literacy, computer training, home-buyer education, GED, resume building, ESL, nutrition, exercise, health information/awareness, art, parenting, on-site food cultivation & preparation, and smoking cessation. Classes shall be provided at a minimum of 84 hours per year (drop-in computer labs, monitoring and technical assistance shall not qualify) and be located within 1/2 mile of the Project or except where Project will provide no cost round trip transportation.  
**Applicable**
24. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents 20 hours or more per week of licensed childcare on-site or there must be 20 hours or more per week of licensed childcare available to Project residents within 1/2 mile of the Project except where Project will provide no cost round trip transportation.  
**Applicable**

**RESOLUTION NO. 20-146**

**Exhibit A**

Page 3 of 5

25. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents health and wellness services and programs within 1/2 mile of the Project or except where the Project will provide no cost round trip transportation. Such services and programs shall provide individualized support for tenants (not group classes) but need to be provided by licensed individuals or organizations. The services shall include, but are not limited to: visiting nurses programs, intergenerational visiting programs and senior companion programs. Services shall be provided for a minimum of 100 hours per year.

**Not Applicable**

26. For a period of fifteen (15) years after the Project is placed in use, the Project will offer to Project residents a bona fide service coordinator. The responsibilities must include, but are not limited to: (a) providing tenants with information about available services in the community, (b) assisting tenants with access services through referral and advocacy, and (c) organizing community-building and/or enrichment activities for tenants (such as holiday events, tenant council, etc.).

**Not Applicable**

27. Minimum sustainable specifications will be incorporated into the project design per Section 5205 of the CDLAC Regulations.

**Applicable**

Section Waived:

- Energy Efficiency
- Landscaping
- Roofs
- Exterior Doors
- Appliances (ENERGY STAR)
- Window Coverings
- Water Heater
- Floor Coverings
- Insulation (Greengard Emission Criteria)

28. The Project commits to becoming certified under any one of the following programs upon completion:
- a. Leadership in Energy & Environmental Design (LEED for Homes) **Not Applicable**
  - b. Green Communities **Not Applicable**
  - c. Passive House Institute US (PHIUS) **Not Applicable**
  - d. Passive House **Not Applicable**
  - e. Living Building Challenge **Not Applicable**
  - f. National Green Building Standard ICC / ASRAE – 700 silver or higher rating **Not Applicable**
  - g. Green Point Rated Multifamily Guidelines **Applicable**
  - h. WELL **Not Applicable**

29. The Project is a New Construction or Adaptive Reuse Project that commits to Energy Efficiency (including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy) beyond the requirements in Title 24, Part 6 of California Building Code (Percentage Better than the 2016 Standards):

- a. 7% **Not Applicable**
- b. 12% **Not Applicable**



**RESOLUTION NO. 20-146**

**Exhibit A**

Page 5 of 5

39. As specified in Section 5144(b) of the Committee's Regulations, sponsors will be required to utilize TCAC's Compliance Manual specifically Section VI: Qualify Tenants for Low Income Housing Tax Credit Units, to verify tenant income in conjunction with initial occupancy. No less than every three (3) years after the project is completed, the Sponsor must collect and retain the following income and verification documentation related to all the Federally Bond-Restricted units identified in the Committee Resolution: TCAC Tax Income Calculation (TIC) or equivalent documentation, all associated source income documentation, evidence of the verifying income computation and unit lease.

**Applicable**

40. As specified in Section 5144(c) of the Committee's Regulations, compliance with the income and rental requirements of the Federally Bond-Restricted Units identified in the Committee Resolution and the Bond Regulatory Agreement must be demonstrated by the Applicants initial review of 20% of all management files associated with the Federally Bond-Restricted units and subsequent review every three (3) years of 20% of all management files associated with the Federally Bond-Restricted units.

**Applicable**

41. As specified in Section 5144(d) of the Committee's Regulations, applicants are required to ensure an onsite inspection as well as an on-site review of the 20% Federally Bond-Restricted units is performed every three (3) years after the Qualified Project Period has commenced.

The following entity will conduct the site and file inspections:

**Not Applicable**

STATE OF CALIFORNIA  
CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE  
ACCOUNTING SERVICES  
915 Capitol Mall, Room 311  
Sacramento, CA 95814  
(916) 653-3255

**FILING FEE INVOICE**

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

Date: September 22, 2020

Invoice No.: FY 20-051

Application No.: 20-624

Analyst Initials: RCF

To: Omar Cortez  
Asset Manager  
City and County of San Francisco  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103

---

*2<sup>nd</sup> Installment of fee levied pursuant to Section 8869.90 of the California Government Code:*

NAME OF ISSUER: City and County of San Francisco

NAME OF PROJECT: Fillmore Marketplace

ALLOCATION AWARD DATE: September 16, 2020

ALLOCATION AWARD AMOUNT: \$21,762,000

AMOUNT DUE:

Allocation award x .00035	=	\$	7,616.70
Less initial application fee	=	-\$	1,200.00
<b>Amount Due</b>	=	<b>\$</b>	<b>6,416.70</b>

**Issuer or Bond Trustee to complete the following (please use ink):**

BOND ISSUANCE DATE:

PRINCIPAL AMOUNT OF BOND ISSUE: \$

AMOUNT OF BOND ALLOCATION USED: \$

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

REVISED AMOUNT DUE:

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

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

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Tuesday, January 12 at 10:00 a.m., by telephone at (855) 228-1766; Access Code 17033508#, the City and County of San Francisco (the "City") will conduct a public hearing (the "Public Hearing") at which time the City will hear and consider information concerning the proposed sale and issuance by the City of multifamily affordable housing mortgage revenue bonds (the "Bonds") in an aggregate principal amount not to exceed Twenty Four Million Dollars (\$24,000,000.00). The proceeds of the Bonds will be loaned to Fillmore Marketplace Housing Partners, L.P. (or an affiliate thereof or successor thereto) (the "Borrower"), pursuant to a loan agreement (the "Loan Agreement"). The proceeds of the Bonds loaned to the Borrower will be used to finance the rehabilitation of 120 units of residential rental housing located at 1223 Webster Street, San Francisco, California 94115 (the "Project"). The Project will be owned and operated by the Borrower.

The Bonds will be paid entirely by the Borrower from the revenues of the Project, in accordance with the Loan Agreement. Neither the full faith and credit nor the taxing power of the City, the State of California (the "State") or any other political corporation, subdivision or agency of the State is pledged to the payment of the principal, premium, if any, or interest on the Bonds, nor shall the City, the State or any other political corporation, subdivision or agency of the State be liable or obligated to pay the principal, premium, if any, or interest on the Bonds.

The Public Hearing is intended to comply with the public approval requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

All those interested in matters related to the issuance of the Bonds and to the financing of the Project are invited to attend and be heard at this hearing. Interested parties may call into the hearing at the time and number indicated above or submit written comments, which must be received prior to the Public Hearing, to the City, c/o Omar Cortez, Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.

Date: Monday, December 28, 2020

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

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



**London N. Breed**  
Mayor

**Eric D. Shaw**  
Director

**TEFRA Hearing Minutes**

**Project Name(s):** Fillmore Marketplace

**Project Address:** 1223 Webster Street  
San Francisco, California 94115

**Project Block/Lot:** 0732/007

**Hearing Location:** Due to the COVID-19 Health Emergency, the Hearing was held remotely via a toll free phone call at (855) 228-1766; Access Code 17033508#. This dial-in information was included in the public hearing notice.

**Hearing Date/Time:** January 12, 2021, 10:00 a.m. to 10:25 a.m.

---

Omar Cortez of the San Francisco Mayor's Office of Housing and Community Development ("MOHCD") called the hearing to order at 10:00 a.m. Robert Labes, with Squire Patton Boggs, Bond Counsel for the City in this Project, and Lisa Grady, representative of the Project Sponsor, Related California ("Related"), were also in attendance.

**1. Explanation of the Purpose for the Hearing**

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") is a federal law requiring any issuer of tax-exempt bonds to provide a reasonable opportunity for interested individuals to express their views, either orally or in writing, on the issuance of the bonds and the nature of the improvements and projects for which the bond funds will be allocated. Thus, as the issuer of the tax-exempt bonds financing the subject Project, the City and County of San Francisco held the TEFRA hearing to provide those interested in discussing the Project the opportunity to comment and ask questions.

**2. Comments and Questions from Interested Parties**

In addition to MOHCD, Squire Patton and Boggs, and Related staff noted above, the following Fillmore Marketplace residents attended the hearing to discuss the Project: Shirletha Holmes-Boxx, Andre Ross, Danielle Patton, Betlete Gebrewolt, and Colleen Mohammed.

Upon calling the hearing to order, Mr. Cortez asked the callers to introduce themselves and provide their contact information for the record. The contact information of all the attendees is in the hearing's sign-in sheet, which is also part of the record.

Mr. Labes then solicited public comments and explained that Omar Cortez from MOHCD and Lisa Grady with Related California were on the hearing to answer any questions if they chose to but that the primary purpose of the public hearing was to record comments in support or against the proposed project. He also explained that the City will issue bonds to finance the rehabilitation of the project.

Ms. Shirletha Holmes-Boxx said that she was in support of any bonds for Fillmore Marketplace. She said that she supported the project wholeheartedly and that they had her backing 100%.

Mr. Andre Ross said he would not ask questions because he understood they would not necessarily be answered. He said that he felt he was in a limbo.

Ms. Patton asked the following questions:

- If the property received the allocation to make improvements on the property, will the property continue to be affordable? Ms. Grady responded that bonds that will be issued are tax-exempt bonds available to support affordable housing so they property will continue to operate as 100% affordable.
- Will rent increases be affected? Ms. Grady: rent increases will continue to be determined on an annual basis as they are now because the same Regulatory agencies HCD and MOHCD will remain.
- Where is the loan coming from? Ms. Grady: Union Bank will provide the loan.
- If the loan defaults, can the new owner be able to take the property and convert it to market rate housing? Ms. Grady: no the affordability will remain in place even if the loan goes into default.
- Related Management has many luxury properties in SF – how can we make sure that Related Management not use the funds for other luxury properties. Ms. Grady: Related Management will not be the owner – Related California in a joint venture with a nonprofit developer will be. The joint venture is required to use the loan funds for Fillmore.
- Will there be audits to show how the funds are being used? Related will have meetings with residents to provide reports on how the funds are being spent.
- Ms. Patton thank Ms. Grady for her responses and said that she supported the project

Ms. Mohammed asked whether she could get a copy of the recording. Mr. Cortez explained to Ms. Mohammed that the call was not being recorded but that he was taking notes to the best of his ability and that the notes would be part of the record. Ms. Mohammed also asked what the scope of work would be with the project renovation. Ms. Grady told Ms. Mohammed that Related is in currently refining the scope of work, that the money will be available in March and that a meeting or meetings will be scheduled with the residents to discuss the rehab scope once it



is finalized. She also said that Related would devise a plan to communicate with the residents about the progress of the rehabilitation project.

Mr. Cortez asked Ms. Grady who would be the contact if the residents had additional questions. Ms. Grady said that residents may contact the onsite property manager with questions and that if the manager couldn't answer their questions, the onsite manager would forward them to Ms. Grady.

MOHCD staff received two letters from Fillmore Marketplace Apartments residents after the date of the public hearing. The first letter was from Mr. Renaldo Thompson, dated January 4, 2021. The second letter was from Mr. Andre Ross, dated January 5, 2021. Both letters are attached to these minutes and are part of the record.

*The hearing was adjourned at 10:25 a.m.*

Omar Cortez,  
January 4, 2021

RECEIVED  
MAYOR'S OFFICE OF HOUSING  
AND COMMUNITY DEVELOPMENT

21 JAN -7 PM 3:19

Re: Fillmore Marketplace Loan

Dear Mr. Cortez,

My name is Renaldo Thompson, and I have been a resident of 1223 Webster Street #407, in San Francisco CA, 94115 since April 19, 1996. I've also lived in this neighborhood for the last (52) fifty-two years. As I was born and raised here.

I would like to address the loan being proposed by Fillmore Marketplace and it's partners? My first concern is that the loan is not being secured by the state of California or the City and County of San Francisco, which leads me to believe, that there would be no protections for low income residents such as myself, and that I and others residents of the property could be displaced if the loan is defaulted?

My second concern is how will the loan be repaid? Will rents be raised to help pay back the loan? If that happens, someone like myself is in big trouble, as I'm on a fixed income and can barely make rent now, and an increase would most definitely be the road to me becoming homeless.

In closing, I would greatly appreciate any knowledge that would help subside my worries. I would like to thank you for taking the time to provide a platform for interested parties to voice their concerns, and hopefully gain some insight on we hat the means for our long term housing?

Respectfully Submitted for your review.

Renaldo Thompson  
1223 Webster Street  
Apt. 407  
San Francisco CA, 94115  
415-690-9792  
renaldo75thompson@gmail.com

01-05-2021

Mayor's Office of Housing and Community Development

C/O Mr. Omar Cortez,

1 South Van Ness Avenue, 5<sup>th</sup> Floor,

San Francisco, CA 94103

To Whom It May Concern,

My name is Andre Ross, I am a residence of Fillmore Market Place Unit 706 for 15 years!

My concerns as a current Tenant are as follows;

1-How does Fillmore Market place plan to conduct this rehabilitation project?

2- Will Fillmore Market Place put in writing that once they rehab a tenet's unit that person or persons will be allowed to return to their unit under the CURRENT PROVISIONS: ANNUAL CERTIFICATE, INCREASED RENT base on that person or persons Yearly Gross INCOME! (NOT ON THE AMI-AREA MEDIAN INCOME!)

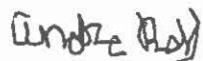
3-If the tenets have to be located during the rehabilitation of their unit is FILLMORE MARKET PLACE going to Pay for moving, storage, rental fee until the unit is completed?

4-If Fillmore Market Place received this Twenty-four Million Dollars loan, what is the percentage of the loan are they going to include as an addition fee into the TENET'S RENT?

Thank you for hearing my concerns!

Sincerely

Andre Ross



P.S.

If you would like to contact me feel free to either telephone me at 1-415-474-9447 (Home) or send correspondence at Andre Ross, 1223 Webster St. Apt 706, San Francisco, CA 94115



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 210083

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Omar Cortez	415-701-4218
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
MYR Mayor's Office of Community Dev.	omar.cortez@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Fillmore Marketplace Housing Partners, LP	<b>TELEPHONE NUMBER</b> 415-677-9000
<b>STREET ADDRESS (including City, State and Zip Code)</b> 44 Montgomery St., Suite 1300, San Francisco, CA 94104	<b>EMAIL</b> asilverbeg@related.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210083
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$21,762,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Tax-exempt multifamily housing revenue bond financing for the acquisition and rehabilitation of Fillmore Marketplace Apartments, a 120-unit multifamily housing development affordable to low-income families located at 1223 Webster Street, San Francisco, California 94115. THIS IS A CONDUIT FINANCING WHICH WILL NOT REQUIRE THE CITY TO PLEDGE ANY OF ITS FUNDS, PROPERTY, OR ASSETS TO THE REPAYMENT OF THE BONDS.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Witte	Bill	CEO
2	Cardone	Frank	Other Principal Officer
3	Sherman	Steve	CFO
4	Silverberg	Ann	CEO
5	Kaflosky	Thor	Board of Directors
6	Golvin	Ben	Board of Directors
7	Wong	Daniel	Board of Directors
8	McGill	Antoinette	Board of Directors
9	Beiro	Noreen	Board of Directors
10	Turner	Chuck	Board of Directors
11	walker	Eddie	Board of Directors
12	Sobel	David	Other Principal Officer
13	Kostosky	Tom	Other Principal Officer
14	Arce	Joshua	Board of Directors
15	Gonzales	Irving	Board of Directors
16	Gomez-Benitez	F	Board of Directors
17	Ahn	Eddie	Board of Directors
18	Layman	Jon	Board of Directors
19	Moss	Sam	Other Principal Officer

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Contreras	Marcia	Other Principal Officer
21			
22			
23			
24			
25			
26			
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
---	---------------------------



**From:** [Gewertz, Heidi \(CAT\)](#)  
**To:** [BOS Legislation, \(BOS\)](#); [Peacock, Rebecca \(MYR\)](#); [BOS Legislation, \(BOS\)](#)  
**Cc:** [Kittler, Sophia \(MYR\)](#); [Chan, Amy \(MYR\)](#)  
**Subject:** RE: Mayor -- [Resolution] -- [Multifamily Housing Revenue Note – Fillmore Marketplace Partners, L.P. - Not to Exceed \$21,762,000]  
**Date:** Wednesday, January 27, 2021 11:45:37 AM  
**Attachments:** [image001.png](#)

---

Hi Jocelyn, I do approve the use of my electronic signature for the Resolution as revised and as attached to your email.

Thanks,

Heidi

Heidi J. Gewertz  
Deputy City Attorney  
Office of City Attorney Dennis Herrera  
1 Dr. Carlton B Goodlett Place, Room 234  
San Francisco, CA 94102  
(415)554-4703

This email may contain privileged or confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this communication is strictly prohibited. If you are not the intended recipient, please respond to this email to notify me of your receipt and then destroy all copies. Thank you.

---

**From:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Sent:** Wednesday, January 27, 2021 11:10 AM  
**To:** Peacock, Rebecca (MYR) <rebecca.peacock@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Gewertz, Heidi (CAT) <Heidi.Gewertz@sfcityatty.org>  
**Cc:** Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>; Chan, Amy (MYR) <amy.chan@sfgov.org>  
**Subject:** RE: Mayor -- [Resolution] -- [Multifamily Housing Revenue Note – Fillmore Marketplace Partners, L.P. - Not to Exceed \$21,762,000]

Greetings,

Please see attached for proof of edits made to the titles of the Resolution. Kindly review and confirm if these changes are acceptable. We are also seeking Deputy City Attorney Heidi Gewertz's approval for use of electronic signature; please reply with the approval to this email. Thank you in advance.

Best regards,  
**Jocelyn Wong**  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102  
T: 415.554.7702 | F: 415.554.5163  
[jocelyn.wong@sfgov.org](mailto:jocelyn.wong@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

**(VIRTUAL APPOINTMENTS)** To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

*Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services*



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

---

**From:** Peacock, Rebecca (MYR) <[rebecca.peacock@sfgov.org](mailto:rebecca.peacock@sfgov.org)>  
**Sent:** Tuesday, January 26, 2021 4:55 PM  
**To:** BOS Legislation, (BOS) <[bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)>; GEWERTZ, HEIDI (CAT) <[Heidi.Gewertz@sfcityatty.org](mailto:Heidi.Gewertz@sfcityatty.org)>  
**Cc:** Kittler, Sophia (MYR) <[sophia.kittler@sfgov.org](mailto:sophia.kittler@sfgov.org)>; Chan, Amy (MYR) <[amy.chan@sfgov.org](mailto:amy.chan@sfgov.org)>  
**Subject:** Mayor -- [Resolution] -- [Multifamily Housing Revenue Note – Fillmore Marketplace Partners, L.P. - Not to Exceed \$21,762,000]

Attached for introduction to the Board of Supervisors is a **resolution authorizing the execution and delivery of a multifamily housing revenue note in one or more series in an aggregate principal amount not to exceed \$21,762,000 for the purpose of providing financing for the acquisition and rehabilitation of a 120-unit multifamily rental housing project known as “Fillmore Marketplace Apartments”**; approving the form of and authorizing the execution of a funding loan agreement, providing the terms and conditions of the loan from the funding lender to the City, and the execution and delivery of the note; approving the form of and authorizing the execution of a borrower loan agreement providing the terms and conditions of the loan from the City to the borrower; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; authorizing the collection of certain fees; approving modifications, changes and additions to the documents; ratifying and approving any action heretofore taken in connection with the back-to-back loans, the note and the project; granting

**general authority to City officials to take actions necessary to implement this Resolution; and related matters.**

[@GEWERTZ, HEIDI \(CAT\)](#), can you please reply-all to indicate your approval? Thanks!

Please let me know if you have any questions.

---

**Rebecca Peacock** ([they/them](#))  
(415) 554-6982 | [Rebecca.Peacock@sfgov.org](mailto:Rebecca.Peacock@sfgov.org)  
Office of Mayor London N. Breed  
City & County of San Francisco

FILE NO. 210083

RESOLUTION NO.

1 [Multifamily Housing Revenue Note ~~---~~ 1223 Webster Street - Fillmore Marketplace Partners,  
2 L.P. - Not to Exceed \$21,762,000]

3  
4 **Resolution authorizing the execution and delivery of a multifamily housing revenue**  
5 **note in one or more series in an aggregate principal amount not to exceed \$21,762,000**  
6 **for the purpose of providing financing for the acquisition and rehabilitation of a 120-**  
7 **unit multifamily rental housing project located at 1223 Webster Street, known as**  
8 **“Fillmore Marketplace Apartments.”; approving the form of and authorizing the**  
9 **execution of a funding loan agreement, providing the terms and conditions of the loan**  
10 **from the funding lender to the City, and the execution and delivery of the note;**  
11 **approving the form of and authorizing the execution of a borrower loan agreement**  
12 **providing the terms and conditions of the loan from the City to the borrower; approving**  
13 **the form of and authorizing the execution of a regulatory agreement and declaration of**  
14 **restrictive covenants; authorizing the collection of certain fees; approving**  
15 **modifications, changes and additions to the documents; ratifying and approving any**  
16 **action heretofore taken in connection with the back-to-back loans, the note and the**  
17 **project; granting general authority to City officials to take actions necessary to**  
18 **implement this Resolution, as defined herein; and related matters, as defined herein.**

19  
20 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
21 “Board”) desires to provide for the financing of a portion of the costs of the acquisition and  
22 rehabilitation by Fillmore Marketplace Housing Partners, L.P., a California limited partnership  
23 (the “Borrower”), of a 120-unit residential rental development project located at 1223 Webster  
24 Street, San Francisco, California, known as “Fillmore Marketplace Apartments” (the “Project”),  
25

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1 to provide housing for persons and families of low income through the issuance of a  
2 multifamily housing revenue note in one or more series (collectively, the "Note"); and

3 ##

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

10 WHEREAS, On September 16, 2020, the California Debt Limit Allocation Committee  
11 ("CDLAC") in its Resolution Number 20-146, allocated an amount not to exceed \$21,762,000  
12 in qualified private activity bonds to the Project; and

13 WHEREAS, The interest on the Note may qualify for tax exemption under Section 103  
14 of the Internal Revenue Code of 1986, as amended ("Code"), only if the Note is approved in  
15 accordance with Section 147(f) of the Code; and

16 WHEREAS, The City now wishes to approve the issuance of the Note in order to  
17 satisfy the public approval requirements of Section 147(f) of the Code; and

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

19 WHEREAS, On December 29, 2020, the City caused a notice stating that a public  
20 hearing with respect to the issuance of the Note would be held by the Mayor's Office of  
21 Housing and Community Development on January 12, 2021, published in the Notices section  
22 of the Mayor's Office of Housing and Community Development website (at  
23 <https://sfmohcd.org/notices-0>); and

24

25

1           WHEREAS, The Mayor’s Office of Housing and Community Development held the  
2 public hearing described above on January 12, 2021, and an opportunity was provided for  
3 persons to comment on the issuance of the Note and the Project; and

4 ///  
5 ///

6           WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
7 the applicable elected representative authorized to approve the issuance of the Note within  
8 the meaning of Section 147(f) of the Code; and

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

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

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

19           WHEREAS, The Note will be limited obligations of the City, the sole source of  
20 repayment of which shall be payments made by the Borrower under the Borrower loan  
21 agreement (hereinafter defined), together with investment income of certain funds and  
22 accounts held under the Funding Loan Agreement (hereinafter defined); and

23           WHEREAS, The City has engaged Squire Patton Boggs (US) LLP and Amira Jackmon,  
24 Attorney at Law, as co-special counsel with respect to the Note (“Co-Special Counsel”); and

25

1           WHEREAS, MUFG Union Bank, N.A. (or an affiliate thereof) (the “Funding Lender”)  
2 has expressed its intention to make the funding loan, to be evidenced by the Note, to the City;  
3 now, therefore, be it

4           RESOLVED, by this Board of Supervisors of the City and County of San Francisco as  
5 follows:

6 ///

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

9           Section 2. Approval of Execution and Delivery of Note. The Board of Supervisors  
10 adopts this Resolution for purposes of establishing compliance with the requirements of  
11 Section 1.150-2 of the United States Treasury Regulations. In accordance with the Act and  
12 the Funding Loan Agreement, the City is hereby authorized to execute and deliver a Note or  
13 notes in one or more series designated as “City and County of San Francisco Multifamily  
14 Housing Revenue Note (Fillmore Marketplace Apartments), Series 2021” with such additional  
15 or other designation as may be necessary or appropriate to distinguish such series from every  
16 other series of bonds or notes, in an aggregate principal amount not to exceed \$21,762,000  
17 (the “Note”). The Note shall bear interest at an interest rate not to exceed twelve percent  
18 (12%) and shall have a final maturity date no later than forty (40) years from the date of  
19 execution and delivery of the Note. The Note shall be in the form set forth in and otherwise in  
20 accordance with the Funding Loan Agreement and shall be executed by the manual or  
21 facsimile signature of the Mayor of the City (the “Mayor”).

22           Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement  
23 (the “Funding Loan Agreement”) in the form presented to the Board, a copy of which is on file  
24 with the Clerk of the Board, is hereby approved. The Funding Loan Agreement shall be  
25 entered into by and among the City, the Funding Lender and U.S. Bank National Association

1 (the "Fiscal Agent"). Each of the Mayor, the Director (the "Director") of the Mayor's Office of  
2 Housing and Community Development ("MOHCD"), the Deputy Director of Housing of  
3 MOHCD, and any other Authorized Governmental Lender Representative (as such term is  
4 defined in the Funding Loan Agreement), acting individually or collectively (each, an  
5 "Authorized City Representative") is hereby authorized to execute the Funding Loan  
6 Agreement, approved as to form by the City Attorney of the City (the "City Attorney"), in  
7 substantially said form, together with such additions thereto and changes therein as the City  
8 Attorney and Co-Special Counsel may approve or recommend in accordance with Section 7  
9 hereof.

10 Section 4. Approval of Borrower Loan Agreement. The Borrower loan agreement  
11 (the "Borrower Loan Agreement") by and among the City, the Funding Lender and the  
12 Borrower, in the forms presented to the Board, copies of which are on file with the Clerk of the  
13 Board, are hereby approved. Each Authorized City Representative is hereby authorized to  
14 execute the Borrower loan agreement and the Assignment in substantially said form, together  
15 with such additions thereto and changes therein as the City Attorney and Co-Special Counsel  
16 may approve or recommend in accordance with Section 7 hereof.

17 Section 5. Approval of Regulatory Agreement and Declaration of Restrictive  
18 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants (the  
19 "Regulatory Agreement" and, together with the Funding Loan Agreement, and the Borrower  
20 Loan Agreement, the "City Documents"), between the City and the Borrower, in the form  
21 presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
22 approved. Each Authorized City Representative is hereby authorized to execute the  
23 Regulatory Agreement, approved as to form by the City Attorney, in substantially said form,  
24 together with such additions thereto and changes therein as the City Attorney and Co-Special  
25 Counsel may approve or recommend in accordance with Section 7 hereof.



1           Section 6.   Issuer Fees. The City, acting through MOHCD, shall charge a fee for the  
2 administrative costs associated with executing and delivering the Note in an amount not to  
3 exceed 0.25% of the aggregate principal amount of the Note. Such fee shall be payable at  
4 funding loan closing and may be contingent on the funding loan closing. The City shall also  
5 charge an annual fee for monitoring the restricted units in the Project in an amount not to  
6 exceed 0.125% of the outstanding aggregate principal amount of the Note, but no less than  
7 \$2,500 annually, from completion of construction through the term of the Regulatory  
8 Agreement. The annual monitoring fee due during the construction period shall be payable at  
9 funding loan closing. The Board hereby authorizes MOHCD to charge and collect the fees  
10 described in this section.

11           Section 7.   Modifications, Changes, Additions. Any Authorized City Representative  
12 executing the City Documents, in consultation with the City Attorney and Co-Special Counsel,  
13 is hereby authorized to approve and make such modifications, changes or additions to the  
14 City Documents as may be necessary or advisable, provided that such modification does not  
15 authorize an aggregate principal amount of the Note in excess of \$21,762,000, provide for a  
16 final maturity of the Note later than forty (40) years, or provide for the Note to bear interest at  
17 a rate in excess of twelve percent (12%) per annum. The approval of any modification,  
18 addition or change to any of the aforementioned documents shall be evidenced conclusively  
19 by the execution and delivery of the document in question.

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

23           Section 9.   General Authority. The proper officers of the City are hereby authorized  
24 and directed, for and in the name and on behalf of the City, to do any and all things and take  
25 any and all actions and execute and deliver any and all certificates, agreements (including

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

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

14 Section 11. This Resolution shall take effect from and after its adoption by the Board  
15 and approval by the Mayor.

16

17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

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20 By: /s/ HEIDI J. GEWERTZ  
21 Heidi J. Gewertz  
22 Deputy City Attorney

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