

**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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## 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 11.2 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.