

FUNDING LOAN AGREEMENT

Among

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

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

and

**[FISCAL AGENT],
as Fiscal Agent**

Dated as of [October 1, 2017]

**CITY AND COUNTY OF SAN FRANCISCO
MULTIFAMILY HOUSING REVENUE NOTE
(455 FELL STREET APARTMENTS), SERIES 2017 []
\$[PAR]**

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FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of [October 1, 2017] (this “Funding Loan Agreement”), is entered into by **BANK OF AMERICA N.A.**, a national banking association (together with any successor hereunder, the “Funding Lender”), **[FISCAL AGENT]** (together with any successor or assign, the “Fiscal Agent”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a public body corporate and politic, organized and existing under the laws of the State of **California** (together with its successors and assigns, the “Governmental Lender”).

RECITALS

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

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

WHEREAS, 455 Fell, L.P., a California limited partnership (the “Borrower”), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition, construction, development, equipping and/or operation of a multifamily residential rental housing development located within the City, known as 455 Fell Street Apartments (the “Project”); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender, the Fiscal Agent and the Borrower will enter into a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note dated the Closing Date (the “Borrower Note”) and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project pursuant to a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (as amended, restated and/or supplemented from time to time, the “Security Instrument”), made by the Borrower in favor of the Governmental Lender, and assigned to the Funding Lender, to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note dated as of the Closing Date (the “Governmental Lender Note”) evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make this Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized;

WHEREAS, the Governmental Lender is entering into this Funding Loan Agreement and the Borrower Loan Agreement solely as a “conduit issuer” and the Funding Loan and the Governmental Lender Note will be limited obligations of the Governmental Lender as described in Section 5.1 hereof.

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

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

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

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

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

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

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

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP. All references herein to “GAAP” refer to such principles as they exist at the date of application thereof.

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

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

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

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

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

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

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

“Approved Transferee” means (1) a "qualified institutional buyer" (“QIB”) as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act") that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender, (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs, (4) CCRC, or (5) a nonprofit corporation or nonprofit organization, all of whose shareholders or members are QIBs, and which invests in obligations of the same type as the Funding Loan Note as a principal aspect of its business.

“Authorized Amount” shall mean \$[PAR], the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

“Authorized Governmental Lender Representative” shall mean (a) when used with respect to the Governmental Lender, the Mayor, the Director of the Mayor’s Office of Housing and Community Development, the Director of Housing Development and the Deputy Director of the Mayor’s Office of Housing and Community Development of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, as evidenced by a written certificate furnished to the Funding Lender, the Fiscal Agent and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by an Authorized Governmental Lender Representative, which certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative; (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative, and (f) when used with respect to MOHCD, any Person authorized to act on behalf of MOHCD under the MOHCD Loan Agreement.

“Borrower” shall mean 455 Fell, L.P., a California limited partnership, and its successors and assigns.

“Borrower Controlling Entity” shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower.

“Borrower Equity Account” means the Borrower Equity Account of the Project Fund established under Section 7.3 hereof.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

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

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

“Borrower Loan Amount” shall mean the Authorized Amount, the maximum principal amount of the Borrower Loan under the Borrower Loan Agreement.

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

“Borrower Loan Payments” shall mean the monthly loan payments payable pursuant to the Borrower Note.

“Borrower Loan Purchase Option” shall have the meaning given such term in Section [1.6] of the Loan Purchase Agreement.

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

“Borrower Required Equity” shall have the meaning given such term in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York or the city where the Fiscal Agent is located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Capitalized Interest Account” means the Capitalized Interest Account of the Project Fund established under Section 7.3 hereof.

“CCRC” shall mean (a) California Community Reinvestment Corporation or (b) one of the following entities, pursuant to an assignment by California Community Reinvestment Corporation of its rights under the Bond Purchase Agreement: (1) Fannie Mae or Freddie Mac, (2) a member bank of California Community Reinvestment Corporation or (3) a fund established and managed by California Community Reinvestment Corporation (or by a single member limited liability company in which California Community Reinvestment Corporation is the sole member) and in which all of the investors in such fund are banks, insurance companies or other financial institutions (or affiliates of such entities) and each of which is a Sophisticated Investor with net assets of not less than \$5 billion. “Closing Costs Fund” shall mean the fund of that name established under Section 7.3(d) hereof.

“Closing Date” shall mean [CLOSING DATE], the date that initial Funding Loan proceeds are disbursed hereunder.

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

“Completion Deadline” shall have the meaning given such term in the Construction Disbursement Agreement.

“Conditions to Conversion” shall have the meaning given such term in the Construction Disbursement Agreement.

“Construction Disbursement Agreement” means that certain Construction Disbursement Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and the Borrower, pursuant to how the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than fifty percent (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” means the date on which the registered owner of the Funding Loan Note becomes CCRC by reason of the assignment of the Funding Loan Note and the Borrower Loan Documents from the Initial Funding Lender to CCRC on such date.

“Costs of Funding” shall have the meaning given such term in the Borrower Loan Agreement.

“Costs of Funding Deposit” shall have the meaning given such term in the Borrower Loan Agreement.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document.

“Draw-Down Notice” shall mean a notice described in Section 2.1 hereof regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Equity Contributions” shall have the meaning given such term in the Borrower Loan Agreement.

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

“Expense Fund” shall mean the fund of that name established under Section 7.3(c) hereof.

“Fiscal Agent” shall mean [FISCAL AGENT], as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent Fee” shall mean the annual fee of the Fiscal Agent in the amount of [\$Fiscal Agent Fee] annually, payable in equal semiannual installments in advance by the Borrower to the Fiscal Agent on each January 1 and July 1, commencing on the Closing Date;

“Fitch” shall mean Fitch, Inc.

“Funding Lender” shall mean (a) initially, Bank of America, N.A., a national banking association, (b) on and after the Conversion Date, CCRC, and (c) any successor under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, of even date herewith, by and among the Funding Lender, the Fiscal Agent and the Governmental Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall mean this Funding Loan Agreement, the Borrower Loan Documents, the Regulatory Agreement, the Tax Certificate, all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and all amendments, modifications, renewals and substitutions of any of the foregoing.

“Funding Loan Payment Fund” shall mean the fund of that name established under Section 7.3(a) hereof.

“Government Obligations” shall mean noncallable, nonprepayable (i) direct, general obligations of the United States of America, or (ii) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

“Governmental Lender” shall mean the City and County of San Francisco and its successors and assigns.

“Governmental Lender Note” shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

“Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A 1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG 1” (for fixed rate) or “VMIG 1” (for variable rate) for three (3) months or less and “Aaa” for greater than three (3) months. If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody’s rate a Permitted Investment and (iii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that Rating Agency, then the Permitted Investment will be deemed to be rated below the

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

“Initial Funding Lender” shall mean Bank of America, N.A., a national banking association, as CCRC’s seller under the Loan Purchase Agreement, or any of its successors or assigns under the Loan Purchase Agreement.

“Loan Purchase Agreement” shall mean the Loan Purchase Agreement dated as of [October 1, 2017], among the Borrower, Initial Funding Lender and CCRC, pursuant to which and subject to the terms and conditions therein, CCRC has agreed to purchase up to [\$Amount] principal amount of the Funding Loan on the Conversion Date.

“Maturity Date” shall mean [MATURITY DATE].

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

“Minimum Beneficial Ownership Amount” shall mean an amount no less than [_____ percent (___%)] of the outstanding principal amount of the Funding Loan.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Note Proceeds Account” means the Note Proceeds Account of the Project Fund established under Section 7.3 hereof.

“Noteowner” or “owner of the Governmental Lender Note” means the owner, or as applicable, collectively the owners, of the Governmental Lender Note as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.4(d) hereof.

“Ongoing Governmental Lender Fee” shall mean the annual administrative fee of the Governmental Lender due and payable by the Borrower pursuant to [Section __] of the Regulatory Agreement.

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

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

- (1) direct and general obligations of the United States of America;
- (2) obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are fully unconditionally guaranteed by the full faith and credit of the United States of America;
- (3) senior debt obligations of CCRC;

(4) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency;

(5) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations;

(6)(i) tax-exempt obligations rated in the highest short-term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund;

(7) the [Pooled Investment Fund] of the City and County of San Francisco; or

(8) any other investments approved in writing by the Funding Lender Representative with the written consent of the Governmental Lender.

For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1”/”A-1+” for obligations with less than one year maturity; at least “Aaa”/”VMIG-1”/”AAA”/”A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa”/”AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

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

“Pledged Revenues” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Borrower Loan, the

Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon (except any amounts on deposit in the Expense Fund, the Rebate Fund and Closing Costs Fund).

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

“Potential Default” shall mean the occurrence of an event which, under the Borrower Loan Agreement, would, but for the giving of notice of passage of time, be an Event of Default.

“Project” shall have the meaning given such term in the Borrower Loan Agreement.

“Project Fund” shall mean the fund of that name established under Section 7.3(b) hereof.

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

“Qualified Financial Institution” shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by the Fiscal Agent for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “Permitted Investments” or an entity which guarantees or insures, as applicable, the agreement, a “Qualified Financial Institution” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

“Qualified Project Costs” shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the Completion Date shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing or rehabilitating the Project (or any portion thereof) and (B) any

overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of sixty (60) days prior to June 7, 2016, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Funding Loan (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditures is paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, any Developer Fee) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

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

“Rebate Amount” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

“Rebate Analyst” shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender and the Funding Lender. The initial Rebate Analyst shall be [Initial Rebate Analyst].

“Rebate Analyst’s Fee” shall mean the annual fee of the Rebate Analyst in the amount of [\$Rebate Analyst Fee]. The Rebate Analyst’s Fee is payable by the Borrower to the Rebate Analyst, commencing [Date], every fifth (5th) anniversary thereof, and the Maturity Date or the date the Funding Loan is retired in full.

“Rebate Fund” shall mean the fund of that name established under Section 7.3(e) hereof.

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

“Regulatory Agreement” shall mean that certain Regulatory Agreement, dated as of the date hereof, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

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

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

“Responsible Officer” shall mean any officer within the corporate services department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Second Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term “Second Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax exempt municipal debt established by S&P is “AA” for a term greater than one (1) year, with corresponding ratings by Moody’s of “Aa.” If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody’s rate a Permitted Investment and (iii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated “AA” by S&P and “A” by Moody’s is not rated in the Second Highest Rating Category.

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

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

“Security Instrument” shall mean the Deed of Trust Assignment of Leases and Rents Security Agreement and Fixture Filing (as amended, restated and/or supplemented from time to time) of even date herewith, made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

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

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

“Stabilization Date” shall have the meaning given such term in the Construction Disbursement Agreement.

“Stabilization Deadline” shall have the meaning given such term in the Construction Disbursement Agreement.

“Standard & Poor’s” or “S&P” shall mean Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business division, or its successors.

“State” shall mean the State of California.

“Supplemental Loan Agreement” means that certain Supplemental Loan Agreement dated as of [DATE, 2017] between Borrower and CCRC.

“Tax Certificate” shall mean the Tax Certificate and Agreement executed by the Governmental Lender, the Fiscal Agent and the Borrower on the Delivery Date.

“Tax Counsel” shall mean (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Lender Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace.

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

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

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

“Unassigned Rights” shall mean all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants under the Financing Documents: (a) (i) to be held harmless and indemnified, (ii) to be paid its fees and expenses and the Rebatable Arbitrage pursuant to Section 8.7 hereof, (iii) to give or withhold consent to amendments, changes, modifications and alterations, (iv) to have access to the Project and Project records, and (v) to receive notices; (b) the Governmental Lender’s rights under the Regulatory Agreement, including but not limited to, rights to reimbursement and payment of its fees, costs and expenses; and (c) the right to enforce all of the foregoing, subject to Section 7.2.10 of the Borrower Loan Agreement.

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

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

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

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

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

ARTICLE II

TERMS; GOVERNMENTAL LENDER NOTE

Section 2.1. Terms.

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

(b) **Draw-Down Funding.** The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent for the account of the Governmental Lender for disbursement to the Borrower as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Disbursement Agreement. Upon each advance of principal under the Borrower Loan Agreement and the Construction Disbursement Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement, including the initial advance of [Initial Advance]. Subject to the terms and conditions of the Borrower Loan Agreement, the Funding Lender agrees to advance, on behalf of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower under the Borrower Loan Agreement at least \$51,000 on the Closing Date, and the Funding Lender agrees to correspondingly and simultaneously advance for the account of the Governmental Lender under this Funding Loan Agreement an equal amount as an advance on the Funding Loan. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after December 31, 2020; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion.

(c) **Early Draw-Down Event.** Notwithstanding any provision herein to the contrary, in the event that the Funding Lender or the Borrower (each an “Interested Party”) determines in good faith that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on installments of the Funding Loan which have not been drawn to date (the “Remaining Authorized Amount”), not being tax-exempt, or otherwise determines that it is in its best interest to convert the Funding Loan into a fully funded obligation of the Governmental Lender in order to assure that interest on the Governmental Lender Note will remain tax-exempt, and, in the case of such determination by the Borrower, such action will resolve the uncertainty with respect to the tax-exempt status of the Governmental Lender Note and will not jeopardize receipt of previously committed unfunded debt or

Equity Contributions for the Project, then such Interested Party may provide a Written Direction (a "Draw-Down Notice") to the other Interested Party and the Fiscal Agent as provided herein to cause the Remaining Authorized Amount of the Funding Loan to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date (or such greater number of Business Days to which the Borrower and the Funding Lender may agree in writing, with Written Notice to the Fiscal Agent) on which either the Borrower or the Funding Lender sends Written Notice to the other Interested Party referencing the Draw-Down Notice and containing substantially the following words: "The [Borrower/Funding Lender] elects to [draw/fund] the Remaining Authorized Amount of the Funding Loan (\$_____) effective _____ (the "Draw-Down Date")." The Draw-Down Notice will be delivered in the manner provided for notices hereunder and the Borrower Loan Agreement.

Promptly after receipt of a Draw-Down Notice, the Funding Lender shall advance proceeds of the Funding Loan in the Remaining Authorized Amount (the "Remaining Funding Loan Proceeds") into the Note Proceeds Account of the Project Fund to be held for disbursements to the Borrower pursuant to the Funding Loan Documents. The advance of the Remaining Funding Loan Proceeds shall be treated as an advance of the full remaining principal under this Funding Loan Agreement, and a like amount of the Borrower Loan shall be deemed concurrently and simultaneously advanced under the Borrower Loan Agreement and the Governmental Lender Note shall be deemed to have been issued in the full Authorized Amount against payment by the Funding Lender (taking into account amounts of the Funding Loan previously funded) of the purchase price equal to the Remaining Authorized Amount.

If not otherwise accounted for in the Funding Loan Documents as confirmed in writing by the Funding Lender, the Borrower agrees to pay to the Fiscal Agent on the Draw-Down Date for deposit into the Capitalized Interest Account of the Project Fund, an amount of funds to be agreed upon by the Funding Lender and the Borrower prior to the Draw-Down Date to cover the expected interest due on the Funding Loan as a result of the Draw-Down Notice for the period between the Draw-Down Date and the date of each expected draw in accordance with the then-approved draw schedule under the Funding Loan Documents (the "Additional Interest Deposit"). The Borrower agrees to pay to the Fiscal Agent to be held hereunder, any amounts necessary to enable the Governmental Lender to pay when due, all amounts due with respect to the Funding Loan, to the extent payments made or required to be made under the Borrower Loan Agreement and the Borrower Note are insufficient for such purpose.

(d) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(e) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances under the Borrower Loan Agreement and the Construction Disbursement Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received upon payment of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (e) and in paragraphs (f) and (g) of this Section 2.1.

The Fiscal Agent shall keep a record of all principal advances and principal repayments made under the Governmental Lender Note and shall, upon Written Request, provide the Governmental Lender and the Funding Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

(f) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(g) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note. The Funding Lender agrees to provide copies of the final Borrower Note and any amendments thereto, as well as the Debt Service Schedule (as defined in Section 2.4(b) of the Borrower Loan Agreement) to the Fiscal Agent on the Closing Date, if applicable, or on the date an amendment to the Borrower Note or Debt Service Schedule is executed or finalized, as applicable.

(h) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

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

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

Section 2.3. Execution and Delivery of the Governmental Lender Note. The Governmental Lender Note shall be in substantially the form attached as Exhibit A. The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual signature of an Authorized Officer of the Governmental Lender. The signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals

or any of them shall have ceased to hold such offices prior to the delivery of the Governmental Lender Note or shall not have held such offices at the date of the Governmental Lender Note.

Section 2.4. Required Transferee Representations; Participations; Sale and Assignment.

(a) The Governmental Lender Note shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Governmental Lender Note shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Governmental Lender Note, and any transfers of the Governmental Lender Note, as provided herein, which books shall be maintained by the Fiscal Agent for such purpose consistent with the registration requirements of the Code applicable to tax-exempt obligations and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Initial Funding Lender, and upon the Purchase Date, shall be registered to CCRC.

(b) The Funding Lender may not sell or assign the Funding Loan and the Governmental Lender Note, except in whole to a transferee who agrees to become the "Funding Lender" under the Funding Loan Documents and assume all of the obligations and perform all of the duties of the Funding Lender thereunder, but the Funding Lender shall have the right to sell participation interests in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty percent (20%) of the outstanding principal amount of the Funding Loan; provided that no participant shall hold more than fifty percent (50%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an Approved Transferee that delivers a letter to the Governmental Lender and the Fiscal Agent substantially in the form attached hereto as **Exhibit B** setting forth certain representations with respect to such Approved Transferee (the "Required Transferee Representations"). Notwithstanding the preceding sentence, no Required Transferee Representations shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is an Approved Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Approved Transferees who deliver to the Funding Lender, with a copy to the Governmental Lender, a Required Transferee Representations. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Governmental Lender Note.

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

(d) The Funding Lender shall indemnify and defend the Governmental Lender against any claim brought by any transferor or transferee of the Funding Loan Note in respect of the Funding Loan Documents or the Borrower Loan Documents in the event that the Funding Lender permits a transfer of the Funding Loan Note in violation of the restrictions in Sections 2.4(b) and (c) above.

Section 2.5. Assignment of Borrower Loan and Cancellation of Funding Loan

(a) The Funding Loan shall be subject to cancellation at the option of CCRC, in whole and not in part, by the Funding Lender on the Conversion Date upon CCRC's exercise of the Borrower Loan Purchase Option (as defined in the Loan Purchase Agreement) and delivery of notice to the Governmental Lender, Funding Lender, Fiscal Agent and Borrower as set forth in Section [] of the Loan Purchase Agreement.

(b) If CCRC exercised its right of cancellation pursuant to Section 2.5(a) above, upon cancellation of the Funding Loan, the Governmental Lender Note (but not the Borrower Note, the Deed of Trust, the Supplemental Loan Agreement or the other Loan Documents), shall be deemed paid in full and retired and shall be deemed cancelled on the books of the Fiscal Agent, whether or not the Funding Lender has delivered the Governmental Lender Note to the Fiscal Agent. On the Conversion Date, the Funding Lender shall direct and cause the Funding Lender's representative to transfer and assign all of its right, title and interest in, to and under the Note, the Deed of Trust and the other Loan Documents to CCRC in connection with CCRC's purchase of the Loan; provided, that such instrument of assignment and assumption (which instrument may be substantially in the form of the "Assignment and Assumption" (as defined in the Loan Purchase Agreement) attached to the Loan Purchase Agreement as [Exhibit A] thereto), shall include the Governmental Lender as a consent party and signatory thereto and further shall include, inter alia, the following terms and conditions:

(i) the clear expression of agreement among the parties thereto, including the Governmental Lender, that: (A) the Regulatory Agreement shall continue in full force and effect, notwithstanding the consummation of the Loan Purchase Agreement and cancellation of the Funding Loan; (B) the Governmental Lender has not assigned any of its rights under the Regulatory Agreement to any party; and (C) for purposes of computing the annual administrative fee due and payable by the Borrower pursuant to Section 18 of the Regulatory Agreement, from and after the date of the consummation of the Loan Purchase Agreement and cancellation of the Funding Loan, the computation specified therein shall be based on the outstanding principal amount of the Loan rather than the outstanding principal amount of the Funding Loan;

(ii) as a condition to the execution of such Assignment and Assumption, including the consent of the Governmental Lender, that: (A) CCRC has executed and delivered a Required Transferee Representations Letter substantially in the form of Exhibit B hereto; and (C) the parties to such Assignment and Assumption shall expressly agree that, effective contemporaneously with, and as a condition to consummation of the Loan Purchase Agreement: (I) all accounts held by the Fiscal Agent under the Funding Loan Agreement have been closed and any balances have been transferred pursuant to the terms of the Funding Loan Agreement and the Borrower Loan Agreement, (II) any and all fees and expenses accrued and payable under the Funding Loan Agreement as of the date of such Assignment and Assumption have been paid or provided for; (III) the Funding Loan Agreement is thereby terminated, except for such provisions, including provisions relating to indemnification and rebate (including retention of records), as expressly survive pursuant to the Funding Loan Agreement's terms; and (IV) the Reserved Rights (as defined in the Borrower Loan Agreement) of the Governmental Lender shall continue in full force and effect for the benefit of the Governmental Lender, notwithstanding the assignment of the Loan Documents under such Assignment and Assumption and the termination of the Indenture; and

(iii) the fees and expenses of the Governmental Lender and the Fiscal Agent, including fees and expenses of counsel to either of them, incurred in connection with the consummation of the Loan Purchase Agreement and the transactions contemplated by such Assignment and Assumption, have been paid in full as of the effective date thereof by the Borrower or CCRC.

(c) Upon such purchase and transfer, the Governmental Lender and the Fiscal Agent shall have no further interest in the Loan or the Loan Documents, and this Funding Loan Agreement shall be terminated in accordance with Section 10.01 (subject to any indemnification or other rights expressly intended to survive termination, as set forth in this Funding Loan Agreement, the Borrower Loan Agreement or the Regulatory Agreement). The Governmental Lender and the Fiscal Agent shall execute and deliver any additional documents or take such other actions as may be reasonably required in order to effect the cancellation of the Funding Loan and transfer of the Funding Loan to CCRC as contemplated hereunder on the Conversion Date; provided that the provisions of this Section 2.5 hereof shall also apply to any such documents and actions.

ARTICLE III

PREPAYMENT

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

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

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

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

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

ARTICLE IV

SECURITY

Section 4.1. Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

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

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

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

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

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in

tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

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

- (a) The Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;
- (b) The originally executed Borrower Loan Agreement and Regulatory Agreement;
- (c) The originally executed Security Instrument and all other Funding Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;
- (d) UCC financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and
- (e) UCC financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

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

ARTICLE V

LIMITED LIABILITY

Section 5.1. Source of Payment of Funding Loan and Other Obligations. The Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and the Security pledged and assigned hereunder. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Note or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Lender Note, or hereunder, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The issuance of the Funding Loan and the Governmental Lender Note shall not directly, indirectly, or contingently obligate the City, State of California or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

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

ARTICLE VI

CLOSING CONDITIONS; APPLICATION OF FUNDS

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

- (a) Receipt by the Funding Lender of the original Governmental Lender Note;
- (b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed to the Funding Lender by the Governmental Lender;
- (c) Receipt by the Funding Lender and the Governmental Lender of executed counterparts of the Funding Loan Documents including this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Disbursement Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument;
- (d) Receipt by the Funding Lender of a certified copy of the Resolution;
- (e) Receipt by the Governmental Lender of an executed Required Transferee Representations from the Funding Lender;
- (f) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement;
- (g) Receipt by the Funding Lender and the Governmental Lender of a Tax Counsel Approving Opinion;
- (h) Receipt by the Funding Lender and the Governmental Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act of 1933, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
- (i) delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender and the Funding Lender to the effect that the Funding Loan Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Funding Lender; and

(j) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may require.

ARTICLE VII

FUNDS AND ACCOUNTS

Section 7.1. Authorization to Create Funds and Accounts. Except as provided in Section 7.3 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 Funding Lender, the Fiscal Agent (as directed by the Funding Lender) and the Servicer, if any, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents.

Section 7.2. Reserved.

Section 7.3. Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Funding Loan Payment Fund;
- (b) The Project Fund, and within the Project Fund (i) the Note Proceeds Account, (ii) the Capitalized Interest Account and (iii) the Borrower Equity Account;
- (c) The Expense Fund;
- (d) The Closing Costs Fund; and
- (e) The Rebate Fund.

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

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

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

The Fiscal Agent shall apply all amounts on deposit in the Funding Loan 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 (and premium, if any) on the Funding Loan, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Funding Loan on the Maturity Date or earlier prepayment or acceleration date.

Section 7.5. Expense Fund. The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Regulatory Agreement or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender, the Rebate Analyst 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 Ongoing Governmental Lender Fee, (ii) the Fiscal Agent Fee due and (iii) the Rebate Analyst Fee due.

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 the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency.

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

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

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

No amount shall be charged against the Expense Fund except as expressly provided in this Article VII hereof.

Section 7.6. Closing Costs Fund. On the Closing Date, the Borrower shall deposit or cause to be deposited with the Fiscal Agent, for deposit in the Closing Costs Fund, the amount set forth in Exhibit E hereto. Amounts in the Closing Costs Fund shall be disbursed by the Fiscal Agent to pay Costs of Funding on the Closing Date or as soon as practicable thereafter as set forth in a closing memorandum prepared by the Funding Lender and approved by the Governmental Lender. Any interest earnings on amounts on deposit in the Closing Costs Fund shall remain in the Closing Costs Fund. Any moneys remaining in the Closing Costs Fund (including investment proceeds) after the earlier of (i) the payment of all costs of issuance as certified in writing to the Fiscal Agent by the Borrower or (ii) a period of six (6) months after the

Closing Date, shall be transferred to the Borrower Equity Account of the Project Fund (such amounts having been funded with Borrower Required Equity) and the Closing Costs Fund shall be closed.

Section 7.7. Project Fund.

(a) Proceeds of the Funding Loan provided by the Funding Lender shall be deposited to the Note Proceeds Account and the Capitalized Interest Account of the Project Fund on the Closing Date as set forth in Exhibit E and otherwise as directed in writing by the Funding Lender. Borrower Required Equity shall be deposited to the Borrower Equity Account and the Capitalized Interest Account of the Project Fund on the Closing Date as set forth in Exhibit E and otherwise as directed in writing by the Funding Lender. The Fiscal Agent shall disburse moneys in the Note Proceeds Account, the Capitalized Interest Account and the Borrower Equity Account of the Project Fund for the acquisition, construction and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Except as otherwise provided in this Section, payments shall only be made from the Project Fund upon delivery to the Fiscal Agent of a Written Requisition substantially in the form attached hereto as Exhibit C and approved by the Funding Lender.

In addition to the above, in connection with any requisition or disbursement from the Project Fund:

(i) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Written Requisition signed only by the Funding Lender, 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.

(ii) Upon the occurrence of any mandatory prepayment of the Funding Loan pursuant to the terms hereof or an Event of Default, any amounts then remaining in the Project Fund may, at the Written Direction of the Funding Lender, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Funding Loan without a Written Requisition.

(iii) The Fiscal Agent shall immediately provide Written Notice to the Borrower, the Funding Lender, the Servicer and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section.

(iv) The Fiscal Agent may conclusively rely on all Written Requisitions executed by the Authorized Borrower Representative and approved by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, and shall constitute to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. All Written Requisitions delivered to the Fiscal Agent shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent.

Upon receipt of each Written Requisition signed by the Authorized Borrower Representative and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within two (2) Business Days, make payment from the applicable account within the Project Fund in accordance with such Written Requisition. 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 as provided in the Written Requisition, (ii) to the

Borrower who shall then promptly pay such person, firm or corporation to be paid, or (iii) upon receipt by the Funding Lender of evidence that the Borrower has previously paid such amount, directly to the Borrower. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

(b) Amounts set aside to pay capitalized interest on the Funding Loan, including additional capitalized interest deposited by the Borrower in connection with any deposits made pursuant to Section 2.1 hereof or extension of the Completion Deadline or the Stabilization Deadline, shall be deposited in the Capitalized Interest Account of the Project Fund. On the last Business Day immediately preceding each Interest Payment Date up to and including the Stabilization Date, the Fiscal Agent shall transfer funds from the Capitalized Interest Account of the Project Fund or to the extent that insufficient funds are on deposit in the Capitalized Interest Account, from the Borrower Equity Account of the Project Fund, to the Funding Loan Payment Fund to pay the interest due on the Funding Loan on the following Interest Payment Date without the need for a Written Requisition. After the Stabilization Date, any amounts remaining in the Capitalized Interest Account shall be transferred to the Note Proceeds Account of the Project Fund to the extent such amounts were funded with proceeds of the Funding Loan and to the Borrower Equity Account of the Project Fund to the extent such amounts were funded with Borrower Required Equity.

Section 7.8. 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 or the Rebate Analyst to be transferred thereto pursuant to Section 5.35 of the Borrower Loan Agreement.

Section 7.9. Investments.

Amounts on deposit in all funds and accounts held hereunder shall be invested in Permitted Investments as directed in writing by the Borrower and approved in writing by the Funding Lender. Investment income earned on amounts on deposit in each fund and account shall be retained in and credited to and become a part of the amounts on deposit in such fund or account. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Certificate.

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

The Governmental Lender, the Funding Lender and the Borrower (by its execution of the Borrower Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Governmental Lender or the Funding Lender the right to receive brokerage confirmations of security transactions as they occur, the Governmental Lender and the Funding Lender will not receive such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

The amounts received upon the sale of the Governmental Lender Note and interest and other investment earnings on those amounts shall be allocated and used for financing Qualified Project Costs of each building and related land in the Project so that the aggregate basis of each such building and related

land, within the meaning of Section 42(h)(4) of the Code, shall be financed by fifty percent (50%) or more from those amounts.

ARTICLE VIII

REPRESENTATIONS AND COVENANTS

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

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

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

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

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

(e) The California Debt Limit Allocation Committee has provided an allocation of the State's 2015 private activity bond volume cap under Section 146 of the Code to the Governmental Lender for the

Governmental Lender Note, and the Governmental Lender has timely made any required carry forward election with respect to such allocation. The Governmental Lender hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by Section 3.03 of IRS Notice 2011-63.

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

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

Section 8.3. Repayment of Funding Loan. Subject to the provisions of Article II hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement.

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

Section 8.5. Borrower Loan Agreement Performance.

(a) The Funding Lender, the Fiscal Agent and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required to nor obligated to) perform and observe any agreement or covenant of the Governmental Lender under the Borrower Loan Agreement.

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

Section 8.6. Maintenance of Records; Inspection of Records.

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

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

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

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered;

(b) Not take or cause to be taken any other action or actions, or fail to take any action or actions, which would adversely affect the tax exempt status of the Governmental Lender Note;

(c) At all times do and perform all acts and things permitted by law and necessary or desirable in order to maintain tax-exempt status of the Governmental Lender Note, except in the event where any holder of the Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Governmental Lender Note or a “related person” within the meaning of Section 147(a) of the Code;

(d) Not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Funding Loan to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, pursuant to the terms and provisions of the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Funding Loan, or any other moneys which may be deemed to be proceeds of the Funding Loan pursuant to the Code, which would cause the Funding Loan to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement, the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

For purposes of this Section 8.7: (1) the Governmental Lender is assuming, with the consent of the parties hereto, the truth of the covenants and representations of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement and the Tax Certificate, and the Borrower’s compliance therewith; (2) the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control; (3) no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender; and (4) in complying with the foregoing covenants, the Governmental Lender may rely on an opinion of Tax Counsel.

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

ARTICLE IX

DEFAULT; REMEDIES

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

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

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

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of thirty (30) days after there has been given Written Notice, as provided in Section 12.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed thirty (30) days unless extended in writing by the Funding Lender) within which to cure such default; or

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

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

Section 9.2. Acceleration of Maturity; Rescission and Annulment.

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

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

(i) There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Funding Loan and the Governmental Lender Note, (2) the principal of and Prepayment Premium, on the Funding Loan and the Governmental Lender Note that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan and the Governmental Lender Note, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Funding Loan and the Governmental Lender Note, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

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

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

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

Section 9.3. Additional Remedies; the Funding Lender Enforcement.

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

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

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

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the

real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

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

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after the Borrower and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement or any of the other Funding Loan Documents to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed thereunder, the Funding Lender shall have the right to exercise all its rights and remedies thereunder.

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

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

(b) Second: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Funding Loan) on overdue principal of, and Prepayment Premium and overdue

installments of interest on the Funding Loan; provided, however, that partial interests in any portion of the Funding Loan shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

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

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

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

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

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

Section 9.8. Delay or Omission Not Waiver. No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by the Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

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

Section 9.10. Remedies Under the Borrower Loan Agreement or the Borrower Note. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its

own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the Governmental Lender Note has been accelerated or declared due and payable by reason of an Event of Default.

Section 9.11. Waiver of Appraisal and Other Laws.

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

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

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

Section 9.13. Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

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

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

ARTICLE X

AMENDMENT; AMENDMENT OF THE BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS

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

Section 10.2. Amendments Require the Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Funding Loan Document without the prior Written Consent of the Funding Lender.

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

ARTICLE XI

THE FISCAL AGENT

Section 11.1. Appointment of the Fiscal Agent; Acceptance. The Governmental Lender hereby appoints [FISCAL AGENT] as the Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

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

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.

(a) If an event of default exists hereunder or under any Funding Loan Document, the Fiscal Agent shall exercise such rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(b) hereof, use the same degree of care and skill in its exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any other Funding Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct;

(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 its 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 other Funding Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or the Ongoing Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Notice of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any other Funding Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

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

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

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

Section 11.6. 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 the Fiscal Agent.

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

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

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.

- (a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.
- (b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.
- (c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

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

Section 11.10. Resignation and Removal; Appointment of Successor.

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

(b) The Fiscal Agent may resign at any time by giving sixty (60) days' Written Notice thereof to the Governmental Lender, the Borrower, the Servicer, if any, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within forty-five (45) 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 thirty (30) days' notice by (i) the Governmental Lender, with Written Notice delivered to the Funding Lender and the Borrower or (ii) the Funding Lender, with Written Notice delivered to the Governmental Lender and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and the Security shall be in the possession of a receiver or Fiscal Agent 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 sixty (60) days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or the Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

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

Section 11.11. Acceptance of Appointment by Successor.

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and the 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, the retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to the 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 the successor Fiscal Agent all property and money held by the retiring Fiscal Agent hereunder. Upon request of any successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to the 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 the successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

Section 11.12. Merger, Conversion, Consolidation or Succession to Business. Any 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, 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 successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Governmental Lender and the Funding Lender within thirty (30) days of such succession.

Section 11.13. Appointment of Co-Fiscal Agent. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Funding Loan Document, 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 Written 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 or any Funding Loan Document 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 him or 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.

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

Section 11.15. 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.

Section 11.16. City Contracting Provisions. The Funding Lender and the Fiscal Agent each covenant and agree to comply with the provisions set forth in Exhibit F to this Funding Loan Agreement, to the extent applicable to the Funding Lender as maker of the Funding Loan or the Fiscal Agent as fiscal agent for the Funding Loan, which is incorporated in and made a part of this Funding Loan Agreement by this reference.

ARTICLE XII

MISCELLANEOUS

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

If to the Governmental Lender:

City and County of San Francisco
Mayor's Office of Housing and Community
Development (MOHCD)
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Adam Cray
Telephone: (415) 701-5512
Facsimile: (415) 554-4755

If to the Fiscal Agent:

[FISCAL AGENT NAME]
[ADDRESS]
Attention: [_____]

Telephone: [_____]
Facsimile: [(____) ____-____]

If to the Borrower: 455 Fell, L.P.
1360 Mission Street, Suite 300
San Francisco, CA 94103
Attention: Tim Dunn
Telephone: (415) 355-7113
Facsimile: (415) 355-7101

and with a copy to: Gubb & Barshay
505 14th Street, Suite 1050
Oakland, CA 94612
Attention: Evan Gross
Telephone: (415) 781-6600 x 6
Facsimile: (415) 781-6967

[and a copy to Equity Investor] [Bank of America, N.A.]
[ADDRESS]
Attention: [_____]
Telephone: [_____]
Facsimile: [(____) ____-____]

If to the Funding Lender: Bank of America, N.A.
[ADDRESS]
Attention: [_____]
Telephone: [_____]
Facsimile: [(____) ____-____]

And to: _____

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three (3) Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

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

by providing Written Notice of such change of address to all of the parties by Written Notice as provided herein.

Section 12.2. Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

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

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

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

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

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

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

Section 12.9. Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted and related documents and may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Section 12.11. Reference Date. This Funding Loan Agreement is dated for reference purposes only as of the first (1st) day of October, 2017]

[Signature page follows]

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

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

By: _____
Title: _____

[Signatures continue on the next page]

[The Governmental Lender's Signature Page to the Funding Loan Agreement]

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Director, Mayor's Office of Housing and
Community Development

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Heidi J. Gewertz,
Deputy City Attorney

[Signatures continue on the next page]

[The Fiscal Agent's Signature Page to the Funding Loan Agreement]

[FISCAL AGENT]

By: _____
Title: _____

EXHIBIT A

FORM OF THE GOVERNMENTAL LENDER NOTE

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

**CITY AND COUNTY OF SAN FRANCISCO
MULTIFAMILY HOUSING REVENUE NOTE
SERIES 2017 []
(455 FELL STREET APARTMENTS) DATED [CLOSING DATE]**

[\$[PAR AMOUNT]]

FOR VALUE RECEIVED, the undersigned CITY AND COUNTY OF SAN FRANCISCO (“Obligor”) promises to pay to the order of BANK OF AMERICA, N.A. (“Holder”) the maximum principal sum of [FUNDING LOAN AMOUNT IN WORDS] \$[PAR AMOUNT], on [Maturity Date], or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of [October 1, 2017] (the “Funding Loan Agreement”), among Obligor, [FISCAL AGENT], as Fiscal Agent (the “Fiscal Agent”), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on this Governmental Lender Note in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

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

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a construction and permanent loan (the “Borrower Loan”) made by Obligor from proceeds of the Funding Loan to 455 Fell, L.P., a California limited partnership, as borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of [October 1, 2017] (as the same may be modified, amended or supplemented from time to time, the “Borrower Loan Agreement”), among the Obligor, the Fiscal Agent and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under the Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and the Security pledged and assigned under the Funding Loan Agreement. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on this Governmental Lender Note or the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein and in the Funding Loan Agreement, and none of the Funding Loan or this Governmental Lender Note or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan or this Governmental Lender Note shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The issuance of this Governmental Lender Note shall not directly or indirectly or contingently obligate the Obligor or the State of California or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

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

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

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

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

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

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

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount

after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

[Signature Page Follows]

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

OBLIGOR:

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Edwin M. Lee
Mayor

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

EXHIBIT B-1

FORM OF REQUIRED TRANSFEREE REPRESENTATIONS (FUNDING LOAN)

[October __, 2017]

The undersigned, as holder (the “Holder”) of a loan (the “Funding Loan”) in the maximum amount of [\$PAR] from BANK OF AMERICA, N.A.(the “Funding Lender”) to CITY AND COUNTY OF SAN FRANCISCO (the “Governmental Lender”) pursuant to a Funding Loan Agreement dated as of [October 1, 2017] (the “Funding Loan Agreement”) among the Funding Lender, [FISCAL AGENT], as Fiscal Agent and the Governmental Lender (the “Funding Loan”) evidenced by the Multifamily Housing Revenue Note (455 Fell Street Apartments), Series 2017 [] (the “Governmental Lender Note”), or an interest therein, hereby represents that:

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

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Funding Loan, and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to [extend/purchase] the Funding Loan [or an interest therein]. The Holder acknowledges that it has not relied upon the Governmental Lender for any information in connection with the Holder’s purchase of the Funding Loan [or an interest therein].

3. The Holder is an Approved Transferee.

4. The Holder acknowledges that it is purchasing [an interest in] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan, except as contemplated by the Loan Purchase Agreement; provided, however, that the Holder may sell or transfer the Governmental Lender Note and the Funding Loan as provided in Section 2.4 of the Funding Loan Agreement.

5. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Funding Loan will disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and the Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Governmental Lender Note is not registered under the Securities Act of 1933, as amended, and that such registration is not legally required as of the date hereof; and further understands that the Governmental Lender Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock

or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

7. The Holder understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of California or any political subdivision thereof, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

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

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

[Remainder of page intentionally left blank.]

[Signature Page to Required Transferee Representations]

[_____], as Holder

By _____
Name _____
Its _____

EXHIBIT B-2

FORM OF REQUIRED TRANSFEEE REPRESENTATIONS (BORROWER LOAN)

[October 1, 2017]

Pursuant to that certain Funding Loan Agreement dated as of [October 1, 2017] (the “Funding Loan Agreement”) among Bank of America, N.A., as Funding Lender (the “Funding Lender”), [FISCAL AGENT], as Fiscal Agent (the “Fiscal Agent”), and the City and County of San Francisco, as Governmental Lender (the “Governmental Lender”), evidenced by the Multifamily Housing Revenue Note (455 Fell Street Apartments), Series 2017 [] (the “Governmental Lender Note”), the Initial Funding Lender has made a loan in the principal amount of [\$PAR] [(\$Par)] (the “Funding Loan”) to the Governmental Lender. Pursuant to that certain Borrower Loan Agreement (the “Borrower Loan Agreement”) dated as of [October 1, 2017], and executed by and among 455 Fell, L.P. (the “Borrower”), the Governmental Lender, and the Fiscal Agent, the Governmental Lender has made a loan in the principal amount of [\$PAR] and No/100 Dollars [(\$PAR)] (the “Borrower Loan”) to the Borrower of the proceeds of the Funding Loan. The Borrower Loan is evidenced by the Borrower Note (as defined below) executed by Borrower in favor of the Governmental Lender in the aggregate principal amount of the Borrower Loan, and is further evidenced by the documents described in the Borrower Loan Agreement as the “Loan Documents.” The Borrower Note is secured by, among other things, the Deed of Trust (as defined below), encumbering the Borrower’s interest in the Property. Pursuant to the Assignment of Deed of Trust (as defined below), the rights of the Governmental Lender in and to the Borrower Loan Agreement, the Borrower Note and the Deed of Trust (except for the Reserved Rights) have been assigned by the Governmental Lender to the Fiscal Agent.

Pursuant to [Section 1.7] of that certain Loan Purchase Agreement dated as of [October 1, 2017] by and among the Initial Funding Lender, California Community Reinvestment Corporation, a California nonprofit public benefit corporation (“CCRC”) and the Borrower (“Loan Purchase Agreement”) and subject to the terms and conditions set forth therein and in the Funding Loan Agreement, CCRC has elected to purchase the Borrower Loan in lieu of the Funding Loan. As a condition to the execution of an Assignment and Assumption of Deed of Trust and Loan Documents, of even date herewith (the “Loan Assignment”), by the Fiscal Agent, in favor of CCRC, as assignee thereunder (for purposes of this letter, the “Transferee”), with the consent of the Governmental Lender, the Borrower, and the Funding Lender, the undersigned is delivering this Required Transferee Representations and hereby acknowledges receipt of the Purchased Documents (as defined in the Loan Assignment).

In connection with the purchase of the Borrower Loan by the Transferee, the Transferee makes the following representations upon which you may rely:

1. The Transferee has all requisite authority to purchase the Borrower Loan and to execute this letter and any other instruments and documents required to be executed by the Transferee in connection with the purchase of the Borrower Loan.
2. The Transferee is an Approved Transferee.
3. The Borrower Loan is being acquired by the Transferee for investment and not with a view to, or for resale in connection with, any distribution of the Borrower Loan, and the Transferee intends to hold the Borrower Loan for its own account and for an indefinite period of time. The Transferee understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Transferee understands that the Borrower Loan (a) is not registered under the Securities Act of 1933 nor is it being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state and that any exemption from federal or state securities registration requirements for which the Funding Loan was eligible may not extend to the Borrower Loan or the Borrower Note; (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which is not be readily marketable. The Transferee acknowledges and agrees that the Governmental is not the issuer of the Borrower Loan, and that the Transferee is solely responsible for compliance with applicable securities laws relative to its purchase of the Borrower Loan and any subsequent transfer of the Borrower Loan pursuant to the terms of the Borrower Loan Agreement and the Borrower Note.

5. The Transferee understands that (a) the Borrower Loan is not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, the State of California or any political subdivision thereof, (b) the Borrower Loan does not and will not represent or constitute any debt, obligation or pledge of the faith and credit of the Governmental Lender, the State of California or any political subdivision thereof; and (c) the Governmental Lender has no liability with respect to the Borrower Loan, which is solely an obligation and liability of the Borrower. The Transferee acknowledges and agrees that interest on the Borrower Loan or the Borrower Note is not exempt from federal or state income taxes and that any opinions issued with respect to the Funding Loan relative to the status of interest on the Funding Loan do not extend to the status of interest on the Borrower Loan or the Borrower Note, about which Note Counsel has expressed no opinion.

6. The Transferee has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Transferee has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project and the Borrower Loan. The Transferee has not relied upon the Governmental Lender for any information in connection with its purchase of the Borrower Loan.

7. The Transferee acknowledges that neither the Governmental Lender nor the Borrower has prepared an offering document with respect to the Borrower Loan.

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

9. The Transferee acknowledges and agrees that, as provided in the Borrower Loan Agreement and the Borrower Note, it may sell or transfer the Borrower Loan only to a single investor. The Transferee acknowledges and agrees that the Borrower Loan may only be transferred in its entirety, and none of the Loan Documents may be transferred independently of any other Loan Document.

10. The Transferee agrees to indemnify and hold harmless the Governmental Lender with respect to any claim asserted against the Governmental Lender that is based upon the sale, transfer or disposition of the Borrower Loan by the Transferee other than as permitted herein pursuant to the Borrower Loan Agreement and the Borrower Note.

Very truly yours,

[California Community Reinvestment Corporation]

By _____
Name _____

Title _____

EXHIBIT C

**FORM OF WRITTEN REQUISITION
(Project Fund)**

Draw # _____

[FISCAL AGENT]

[FISCAL AGENT ADDRESS]

Attention: _____

Re: City and County of San Francisco Multifamily Housing Revenue Note (455 Fell Street Apartments), Series 2017 []

This requisition (“Requisition”) is being delivered to you in accordance with the Funding Loan Agreement dated as of [October 1, 2017] (the “Funding Loan Agreement”) among Bank of America, N.A. (the “Funding Lender”), the CITY AND COUNTY OF SAN FRANCISCO (the “Governmental Lender”) and [FISCAL AGENT], as Fiscal Agent (the “Fiscal Agent”) pursuant to which the above-referenced note (the “Governmental Lender Note”) was issued. Capitalized terms not defined herein shall have the meanings assigned thereto in the Funding Loan Agreement.

1. You are requested to disburse funds in the amount of [\$_____] from the Note Proceeds Account and [\$_____] from the Borrower Equity Account of the Project Fund as Draw [#_____] pursuant to Section 7.7 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.

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 this Requisition to any of the persons, firms or corporations named therein, and (b) that any materials, supplies or equipment covered by this 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 this Requisition;

(ii) this 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 this Requisition has been incurred in or about the acquisition, construction, rehabilitation, development 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) the amounts included in this Requisition to be funded from the Note Proceeds Account of the Project Fund contains no items representing any Costs of Funding or any other amount constituting an issuance cost under Section 147(g) of the Code;

(v) payment of the costs included in this Requisition will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement or the Tax Certificate;

(vi) not less than ninety five percent (95%) of the sum of: (a) the amounts included in this Requisition to be funded from the Note Proceeds Account of the Project Fund plus (b) all amounts previously disbursed from the Note Proceeds Account of the Project Fund have been or will be applied by the Borrower to pay Qualified Project Costs;

(vii) the Borrower acknowledges that fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not deemed to be Qualified Project Costs; and

(viii) 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 or under the Borrower Loan Agreement.

Dated: [Date]

455 Fell, L.P., A California Limited Partnership

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Its: _____

Approved by the Funding Lender:

BANK OF AMERICA, N.A.

By: _____
Title: _____
Date: _____

EXHIBIT D

CLOSING COSTS REQUISITION

[FISCAL AGENT]
[FISCAL AGENT ADDRESS]
Attention: _____

Re: City and County of San Francisco Multifamily Housing Revenue Note (455 Fell Street Apartments), Series 2017 []

The undersigned, an authorized representative of 455 Fell, L.P., a California limited partnership (the "Borrower"), hereby certifies to you that he/she is authorized and empowered to submit this requisition to you and that attached hereto as Schedule "A" is a schedule of issuance costs incurred in connection with the closing of the funding loan evidenced by the above described Multifamily Housing Revenue Note (the "Governmental Lender Note"), including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned's information and belief, such amounts are true and correct.

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of [October 1, 2017] (the "Funding Loan Agreement") among Bank of America, N.A. (the "Funding Lender"), the City and County of San Francisco (the "Governmental Lender") and [FISCAL AGENT], as Fiscal Agent (the "Fiscal Agent") pursuant to which the Governmental Lender Note was issued and delivered. You are hereby instructed to withdraw from the Closing Costs Fund created under the Funding Loan Agreement the amounts shown across from each payee listed on Schedule "A" hereto and pay such amounts to each such payee by wire transfer or by such other means as is acceptable to you and any such payee.

Dated: [Date]

Very truly yours,

455 Fell, L.P., a California Limited Partnership

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Its: _____

Approved by the Funding Lender:

BANK OF AMERICA, N.A.

By: _____
Title: _____
Date: _____

SCHEDULE "A"

Note: [\$PAR] City and County of San Francisco Multifamily Revenue Note
(455 Fell Street Apartments) Series 2017 []

Payee:

Amount:

Method of Payment:

Description of Expense:

EXHIBIT E

INITIAL DEPOSITS AT CLOSING

Sources	Note Proceeds Account	Capitalized Interest Account	Borrower Equity Account	Closing Costs Fund	Expense Account	Total
Note	\$	\$	\$	\$	\$	\$
Equity						
Total	\$	\$	\$	\$	\$	\$

EXHIBIT F

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 body thereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Funding Loan Agreement.

1. Conflict of Interest. Through its execution of this Funding Loan Agreement (the “Agreement”), Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

2. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

3. Local Business Enterprise Utilization; Liquidated Damages.

a. **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor’s obligations or liabilities, or materially diminish Contractor’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to

Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4. Nondiscrimination; Penalties.

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such Contractor or the Contractor's subcontractors (each, a "Subcontractor"), applicant for employment with such Contractor or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all Subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly "Human Rights Commission").

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

5. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

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

7. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

8. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

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

10. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, Contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

11. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

12. Requiring Minimum Compensation for Covered Employees.

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This

obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

13. Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

14. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

15. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

16. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time..

17. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

18. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision

19. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any Contractor, Subcontractor or consultant who submits a false claim shall be liable to the City 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.