

**AMENDMENT TO FUNDING LOAN AGREEMENT AND
GOVERNMENTAL LENDER NOTE[S]**

This **AMENDMENT TO FUNDING LOAN AGREEMENT AND GOVERNMENTAL LENDER NOTE[S]**, dated as of _____, 20__ (this "**Amendment**"), by and among the **CITY AND COUNTY OF SAN FRANCISCO** (together with any successor to its rights, duties and obligations hereunder, the "**Governmental Lender**"), _____ (together with any successor to its rights, duties and obligations hereunder, the "**Funding Lender**"), and **[FISCAL AGENT]** (together with any successor to its rights, duties and obligations hereunder, the "**Fiscal Agent**").

A. The Governmental Lender previously issued its \$_____ Note[s] (collectively, the "**Governmental Lender Note[s]**") pursuant to the terms of that certain Funding Loan Agreement related to such Governmental Note[s] (the "**Funding Loan Agreement**"), in each case by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent.

B. The proceeds of the Governmental Lender Note[s] were used to fund a loan (the "**Borrower Loan**", evidenced by the related "**Borrower Note[s]**") from the Governmental Lender to _____ the ("**Borrower**") for the purpose of acquiring, developing and [rehabilitating / constructing] a ___-unit multifamily rental housing facility known as ___ and located at _____, San Francisco, California, [a portion of] the residential units in which are reserved for tenants of low, very low or extremely low income.

C. Interest on the Governmental Lender Note[s] is exempt from gross income for federal income tax purposes in part because the Governmental Lender received and used with respect to the Governmental Lender Note[s] a portion of the "volume cap" allocated to the State of California, and further allocated to the Governmental Lender, pursuant to Section 146 of the Internal Revenue Code of 1986 (the "**Code**").

D. Section 146(i)(6) of the Code allows states to preserve or "recycle" volume cap under certain circumstances to provide additional tax-exempt financing for affordable multifamily rental housing.

E. To effect such volume cap recycling, the Governmental Lender desires from time to time to cause the prepayment of the Borrower Note[s] to be transferred to a trustee or custodian and pledged as security for a taxable borrowing of the Governmental Lender ("the **Taxable Borrowing**"), while simultaneously applying a like amount of proceeds of the Taxable Borrowing to prepay the related Governmental Lender Note[s] (a "**Recycling Transaction**").

F. The Funding Loan Agreement currently provides that any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on a Borrower Note shall be deemed automatically to be passed through as a payment or prepayment of principal, interest and premium, if any, due on the related Governmental Lender Note.

G. The Funding Lender, the Governmental Lender and the Fiscal Agent have agreed to amend the Funding Loan Agreement and the Governmental Lender Note[s] to allow for funds to be transferred as described in Recital E above to permit the Governmental Lender to execute a Recycling Transaction.

H. The Funding Loan Agreement provides, in substantial part, that any of the terms of such Funding Loan Agreement and the related Governmental Lender Note[s] may be amended or waived by an instrument signed by the Funding Lender and the Governmental Lender, provided that no such amendment which materially would materially affect the rights, duties, obligations or other interests of the Borrower may be made without the consent of the Borrower.

I. The Governmental Lender and the Funding Lender have determined that amending the

Funding Loan Agreements and Governmental Lender Notes as described herein does not materially affect

the rights, duties, obligations or other interests of the Borrower may be made without the consent of the Borrower.

J. The Funding Lender is as of this date the sole holder of the Governmental Lender Note[s].

K. The Fiscal Agent has agreed to acknowledge and consent to this Amendment.

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

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The capitalized words and terms used in this Amendment shall have the meanings as set forth in the Funding Loan Agreement and the Governmental Lender Note[s], unless the context or use indicates a different meaning or intent, or unless a different meaning is ascribed to them herein.

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

Section 1.3 Titles and Headings. The title and headings of the articles and sections of this Amendment have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any may modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Amendment or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II

AMENDMENTS

Section 2.1 Amendment to Funding Loan Agreement. A new paragraph is hereby added as the final numbered Section of the Funding Loan Agreement as follows:

Section 12.12 Recycling Transactions. Notwithstanding provisions regarding [“Corresponding Payments”] or any other provision of this Funding Loan Agreement or the Governmental Lender Note[s] to the contrary, the Governmental Lender shall be permitted to direct the Fiscal Agent to transfer Borrower Note prepayments to a custodian or trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of the Governmental Lender Note[s], so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of the Governmental Lender Note[s]. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

Section 2.2 Amendment to Governmental Lender Note[s]. A new paragraph is hereby added as the penultimate paragraph of [the/each] Governmental Lender Note as follows:

Notwithstanding provisions regarding “pass-through obligations” or any other provision of this Governmental Lender Note or the Funding Loan Agreement to the contrary, the Governmental Lender shall be permitted to direct Borrower Note prepayments to be transferred to a custodian or

trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of this Governmental Lender Note[s], so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of this Governmental Lender Note[s]. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

ARTICLE III

MISCELLANEOUS

Section 3.1 Ratification of the Original Funding Loan Agreement. Except as supplemented and amended hereby, the Original Funding Loan Agreement is in all respects ratified and confirmed and the Original Funding Loan Agreement as so supplemented and amended hereby shall be read, taken and construed as one and the same instrument. Except insofar as herein otherwise expressly provided, all the provisions, definitions, terms and conditions of the Original Funding Loan Agreement as supplemented and amended hereby, shall be deemed to be incorporated in, and made a part of, this Amendment, and the Original Funding Loan Agreement as supplemented and amended by this Amendment and as otherwise supplemented and amended is in all respects ratified and confirmed.

Section 3.2 Authorization of Amendment. This Amendment shall be construed as having been authorized, executed and delivered under the provisions of the Original Funding Loan Agreement. The Funding Lender hereby waives applicable provisions of the Original Funding Loan Agreement requiring the delivery of an Opinion of Counsel and a Tax Counsel No Adverse Effect Opinion in connection with the execution of this Amendment.

Section 3.3 Binding Effect. This Amendment shall inure to the benefit of and shall be binding upon the Governmental Lender, the Funding Lender, the Fiscal Agent, any Approved Transferee and their respective successors and assigns.

Section 3.4 Severability. If any provision of this Amendment shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or of unenforceable to any extent whatsoever.

Section 3.5 Governing Law. This Amendment shall be governed exclusively by and construed in accordance with the internal laws of the State applicable to contracts made and performed in the State.

Section 3.6 Inclusion as Part of the Funding Loan Agreement. This Amendment on its delivery shall be a part of the Funding Loan Agreement and all references herein to “Funding Loan Agreement” shall include reference to this Amendment as well as the Original Funding Loan Agreement.

Section 3.7 Governmental Lender Direction of Fiscal Agent; Approval of Funding Lender. By its execution of this Amendment, the Governmental Lender hereby directs the Fiscal Agent to execute this Amendment and the Funding Lender hereby approves the execution of this Amendment by the Fiscal Agent.

Section 3.8 Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment to Funding Loan Agreement, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Name:
Title:

_____, as Funding Lender

By: _____
Name:
Title:

[FISCAL AGENT], as Fiscal Agent

By: _____
Name:
Title: