

KUTAK ROCK LLP
DRAFT 09/05/19

FUNDING LOAN AGREEMENT

by and among

MUFG UNION BANK, N.A.,
as Funding Lender

U.S. BANK NATIONAL ASSOCIATION,
as Fiscal Agent

and

CITY OF SAN JOSÉ,
as Governmental Lender

dated as of [September] 1, 2019

relating to:

[\$[16,000,000]]
City of San José
Multifamily Housing Revenue Note
(Palm Court Apartments)
Series 2019D

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FUNDING LOAN AGREEMENT

(Back to Back Loan Program)

THIS FUNDING LOAN AGREEMENT, dated as of [September] 1, 2019 (this “**Funding Loan Agreement**”), is by and among **MUFG UNION BANK, N.A.**, in its capacity as the funding lender hereunder (together with any successor to its rights, duties and obligations hereunder, the “**Bank**”), the **CITY OF SAN JOSÉ**, a charter city and a municipal corporation of the State of California (together with any successor to its rights, duties and obligations hereunder, the “**City**” or “**Governmental Lender**”), and **U.S. BANK NATIONAL ASSOCIATION**, in its capacity as the fiscal agent hereunder (together with any successor to its rights, duties and obligations hereunder, the “**Fiscal Agent**”).

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

ARTICLE I

DEFINITIONS AND INTERPRETATION

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

“**Act**” means Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented to apply to obligations incurred as of the Closing Date.

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

“**Approved Institutional Buyer**” means: (a) a “**qualified institutional buyer**” as defined in Rule 144A promulgated under the United States Securities Act of 1933, as in effect on the date hereof (the “**Securities Act**”), or commercial bank having a minimum capital surplus of \$5,000,000,000; (b) an entity that is directly or indirectly wholly owned or controlled by the Bank (being a financial institution described in (a) above); (c) an entity all of the investors in which are described in (a) or (b) above; or (d) a custodian or trustee for a party or parties described in (a), (b) or (c) above and in each case a party which is not a “substantial user” of the Development or a “related person” thereto, each within the meaning of Section 147(a) of the Code.

“**Assignment of Deed of Trust**” means that certain Assignment of Deed of Trust and Related Documents dated [September] 1, 2019, executed by the Governmental Lender in favor of the Bank.

“**Authorized Representative**” shall mean: (i) as to the Governmental Lender, each of the City Manager, the Director of Housing, the Director of Finance, the Assistant Director of Finance, Treasury Division Manager and Debt Administrator of the Governmental Lender and any other officer or employee of the Governmental Lender designated certificate of any of the foregoing as authorized by the Governmental Lender, acting alone, to perform a specified act, sign a specified

document or otherwise take action with respect to the Funding Loan Note; (ii) as to the Borrower, Welton Jordan, Assistant Secretary or [NAME][TITLE]; (iii) as to the Funding Lender, Elizabeth Van Benschoten, Managing Director or Joshua Evju, Director of MUFG Union Bank, N.A.; and (iv) as to the Fiscal Agent, Andrew Fung. The Funding Lender, the Fiscal Agent, the Bank and the Borrower may from time to time deliver one or more additional certificates designating other Authorized Representative(s).

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

“**Borrower**” means Palm Court San Jose, L.P., a California limited partnership, and its permitted successors and assigns.

“**Borrower Loan**” means the mortgage loan originated by the Governmental Lender to the Borrower in the principal amount of \$[16,000,000] pursuant to the terms of the Borrower Loan Agreement.

“**Borrower Loan Agreement**” means that certain Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program), dated as of [September] 1, 2019, by and among the Borrower, the Governmental Lender and the Bank, as amended and supplemented from time to time, pursuant to which the Borrower Loan is being made.

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

“**Borrower Note**” means that certain Promissory Note (Multifamily Housing Back to Back Loan Program) in the original principal amount of \$[16,000,000] evidencing the Borrower Loan, executed by the Borrower in favor of the Governmental Lender, as amended from time to time.

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

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

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

“**Closing Date**” means the date of issuance of the Funding Loan Note for purposes of the Code.

“**Code**” or “**Internal Revenue Code**” means the Internal Revenue Code of 1986, and with respect to a specific section thereof, such reference shall be deemed to include (a) the regulations promulgated by the United States Department of the Treasury under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any

subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

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

“**Conversion Date**” shall have the meaning given such term in the Borrower Loan Agreement.

“**County**” means the County of Santa Clara, California.

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

“**Development**” means the residential rental facility consisting of 66 units (including 1 manager unit) of multifamily rental housing located at 1200 Lick Avenue in San José, California, on the site described in the Deed of Trust and Exhibit A to the Regulatory Agreement.

“**Event of Default**” means any of the events described as an event of default in Section 8 of the Borrower Loan Agreement.

“**Fiscal Agent**” means U.S. Bank National Association and its successors and assigns in its capacity as the fiscal agent hereunder.

“**Fiscal Agent’s Fees**” means the ongoing fee of \$1,200, payable annually in arrears on each [September] 1, commencing [September] 1, 2020.

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

“**Funding Loan**” means the loan originated hereunder by the Bank to the Governmental Lender in an aggregate principal amount of up to \$[16,000,000], evidenced by the Funding Loan Note, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of the Borrower Loan Agreement.

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

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

“**Funding Loan Note**” means the City of San José’s Multifamily Housing Revenue Note (Palm Court Apartments) Series 2019D which is issued on the Closing Date by the Governmental Lender in favor of the Bank, in the form attached hereto as Exhibit A, as amended and supplemented from time to time.

“**Governmental Lender**” means the City of San José, a charter city and municipal corporation of the State of California, and its successors and assigns.

“**Hedge**” means an interest rate swap or similar instrument between the Borrower and a counterparty wherein the Borrower shall agree to pay a fixed rate not exceeding 12% in exchange for the counterparty’s payment of a rate equal to that borne by the Funding Loan Note.

“**Maximum Rate**” shall mean, where a Hedge is not in full effect or if there is a continuing default under such Hedge by a party other than the Borrower, the lesser of: (i) 12% per annum; or (ii) the applicable maximum rate allowed by law.

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

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

“**Regulatory Agreement**” means, that Regulatory Agreement and Declaration of Restrictive Covenants, dated as of [September] 1, 2019, by and among the Governmental Lender, the Fiscal Agent and the Borrower, as amended and supplemented from time to time in accordance with its terms.

“**Representation Letter**” shall mean a representation letter in substantially the form attached to this Funding Loan Agreement as Exhibit B.

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

“**Reserved Rights**” means the Governmental Lender’s rights to enforce and receive payments of money directly and for its own purposes under Exhibit C and Sections 7.24, 7.27, 7.28, 7.29 and 11.4 (solely as such Sections relate to the Governmental Lender) of the Borrower Loan Agreement; the Governmental Lender’s rights to inspect and audit the books, records and premises of the Borrower and of the Development; its right to collect attorneys’ fees and related expenses; its right to enforce the Borrower’s covenants to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Governmental Lender); its rights to payment of arbitrage rebate; its right to receive fees, notices and reports and to grant or withhold consents or waivers and to enforce its rights under the Regulatory Agreement and this Funding Loan Agreement; its rights to indemnification by the Borrower under Section 7.24 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement; and its rights to amend this Funding Loan Agreement and the Regulatory Agreement in accordance with the provisions hereof and thereof.

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

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

“**Tax Certificate**” means collectively, the Borrower Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 dated the Closing Date, executed and delivered by the Borrower and the Certificate as to Arbitrage dated the Closing Date, executed and delivered by the Governmental Lender and Borrower, each as amended, modified, supplemented or restated from time to time.

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

(a) The Governmental Lender is a municipal corporation and charter city of the State of California, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the limited obligation represented by the Funding Loan 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 Funding Loan 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 Funding Loan 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 the Funding Loan Note.

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

(f) The California Debt Limit Allocation Committee has provided an allocation of the State's private activity bond volume cap under section 146 of the Code to the Governmental Lender for the Funding Loan Note, the Governmental Lender will timely make any required carry forward election with respect to such allocation, and the Governmental Lender will comply with the requirements of the Code 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 Funding Loan Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Funding Loan Note that is required by section 3.03 of said Notice.

(g) 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.

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

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

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

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

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

(d) The Bank has not been served with and, to the knowledge of the Bank, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Bank which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the

Governmental Lender or the execution and delivery of this Funding Loan Agreement, the Borrower Loan Agreement or the Assignment Agreement, (ii) affects or questions the validity or enforceability of this Funding Loan Agreement or the Borrower Loan Agreement, or (iii) questions the power or authority of the Bank to carry out the transactions on its part contemplated by, or to perform its obligations under, this Funding Loan Agreement and the Borrower Loan Agreement.

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

(f) The Bank shall advise the Fiscal Agent in writing of any amendment to the amortization schedules attached to the Borrower Loan Agreement.

ARTICLE III

THE FUNDING LOAN

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

(a) the Bank shall have received an original executed counterpart of this Funding Loan Agreement, the Funding Loan Note, the Assignment of Deed of Trust, the Regulatory Agreement, the Deed of Trust, the original of the Borrower Note endorsed by the Governmental Lender to the Bank, an opinion of Tax Counsel as to the validity of the Funding Loan Note and the exemption of interest thereon from gross income for federal income tax purposes and all of the Borrower Loan Documents;

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

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

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

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

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

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

3.3. Amount and Source of Funding Loan. The Bank hereby makes to the Governmental Lender and agrees to fund, and the Governmental Lender hereby accepts from the Bank, upon the terms and conditions set forth herein, the Funding Loan in an aggregate principal amount of up to \$[16,000,000] and agrees to have the proceeds of the Funding Loan applied and disbursed in accordance with the provisions of this Funding Loan Agreement.

3.4. Disbursement of Funding Loan Proceeds.

(a) The Bank and the Governmental Lender hereby authorize and direct the funding and disbursement by the Bank of the initial principal amount of the Funding Loan in the amount of \$[] on the Closing Date, subject to the satisfaction of all the conditions specified in Section 3.1 above. On the date of execution and delivery of the Funding Loan Note, and the date of execution and delivery of the Borrower Note, the initial proceeds of the Funding Loan in the amount of \$[] shall be disbursed by the Bank, on behalf of the Governmental Lender, directly to Old Republic Title Company for the closing of the Borrower Loan to fund the Borrower Loan under and as provided in Section 5.1.2 of the Borrower Loan Agreement.

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

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

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

(e) From and after the earlier of (i) the Conversion Date (as defined in the Borrower Loan Agreement), or (ii) December 31 of the year which is three years after the Closing Date, no further advances of the Funding Loan shall occur.

ARTICLE IV

LIMITED LIABILITY; NOTE REGISTER

4.1. Limited Liability. All obligations and any liability of the Governmental Lender hereunder, under the Funding Loan Note, under the other Funding Loan Documents and under the Borrower Loan Documents shall be a special, limited obligation of the Governmental Lender secured by the funds and other revenues, funds and assets pledged under this Funding Loan Agreement, and not from any other revenues, funds or assets of the Governmental Lender. The Funding Loan Note shall be payable solely from the revenues, funds and income derived from such pledged funds and other security and is and shall always be a valid claim of the owner thereof only against the such pledged funds and other security, which revenues, funds and income shall be used for no other purpose than to pay the principal installments of, redemption premium, if any, and interest on the Funding Loan Note, except as may be expressly authorized otherwise in the Funding Loan Agreement and the Borrower 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 THE FUNDING LOAN NOTE AND 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 FUNDING LOAN NOTE OR ANY OF THE GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE FUNDING LOAN, THE FUNDING LOAN 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.

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 Funding Loan Note or this Funding Loan Agreement shall be liable personally on the Funding Loan Note or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Funding Loan Note or the execution of this Funding Loan Agreement.

4.2. Note Register. The Funding Loan Note shall be in fully registered form. The Fiscal Agent shall maintain records (the “**Note Register**”) as to the owner of the Funding Loan Note. Any transfer by the Bank of its ownership of the Funding Loan Note (or by any subsequent transferee of the Funding Loan Note) shall be recorded by the Fiscal Agent in the Note Register. The Funding Loan Note shall not be transferred through the services of the Depository Trust Company or any other third-party registrar.

4.3. Transfer of Funding Loan Note.

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

(b) Notwithstanding any other provision hereof, the Funding Loan Note may only be registered in the name of, or transferred to, an Approved Institutional Buyer that executes and delivers to the Governmental Lender and the Fiscal Agent a Representation Letter substantially in the form attached hereto as Exhibit B; provided, however, that no such letter is required to be executed and no prior written consent of the Governmental Lender shall be required in connection with a transfer of the Funding Loan Note to an Affiliate of the Bank.

Nothing contained in this Section 4.3(b) shall be deemed to limit or otherwise restrict the sale by any owner of the Funding Loan Note of any participation interests in the Funding Loan Note, provided that: (i) such owner shall remain the owner of record in the Note Register of the Fiscal Agent following the sale of any such participation interest; (ii) the purchaser of the participation interest is an Approved Institutional Buyer; (iii) any such participation shall be in a principal amount of at least \$250,000 or, if less, the then outstanding principal amount of the Funding Loan Note; and (iv) the purchaser of such participation interest shall provide a Representation Letter to the Governmental Lender and the Fiscal Agent substantially in the form of Exhibit B hereto.

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

(d) The transferor of the Funding Loan Note shall indemnify and defend the Governmental Lender and the officers, directors, employees, attorneys and agents of the Governmental Lender, past, present and future, against any claim brought by any transferor or transferee of the Funding Loan Note in respect of the Borrower Loan Documents in the event that there occurs a transfer of the Funding Loan Note that is not permitted pursuant to this Section 4.3. Failure to comply with Section 4.3(b) shall cause any purported transfer to be null and void.

ARTICLE V

REPAYMENT OF THE FUNDING LOAN

5.1. Funding Loan Repayment.

(a) The Funding Loan shall be evidenced by the Funding Loan Note which shall be executed by the Governmental Lender in the form attached hereto as Exhibit A. The Governmental Lender agrees to pay to the Fiscal Agent, but only from amounts received by the Governmental Lender from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Note and the other Borrower Loan Documents, principal of, premium on (if any) and interest on the Funding Loan at the times, in the manner, in the amounts and at the rates of interest provided in the Funding Loan Note and this Funding Loan Agreement.

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

(c) The Governmental Lender further agrees, subject to Sections 4.2, 5.2 and 6.13 hereof, to request the Borrower to pay to the Bank, solely by the execution of the Borrower Loan Agreement, on the Closing Date a loan fee equal to **[\$50,000 + 0.25% of initial principal amount over \$10 million]**.

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

Section 5.2 shall not be construed to release the Governmental Lender from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Governmental Lender from asserting any rights which it may have against the Bank under the Funding Loan Note or under any provision of law or to prevent or restrict the Governmental Lender from prosecuting or defending any action or proceeding by or against the Fiscal Agent, the Bank or the Borrower or taking any other action to protect or secure its rights, or to prevent or restrict the Bank from asserting any rights which it may have against the Borrower.

Notwithstanding the foregoing, neither any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender or any successor public entity, under any rule of law or penalty of otherwise shall be personally liable for the amounts owing under this Funding Loan Agreement, the Funding Loan Note or any of the other Funding Loan Documents, and the Bank's and the Fiscal Agent's remedies in the event of a default under the Funding Loan shall be limited to those remedies set forth in the Borrower Loan Documents and, if a default also exists under the Borrower Loan Agreement or the Borrower Note, to commence foreclosure under the Deed of Trust and the other Borrower Loan Documents and the exercise of the power of sale or other rights granted thereunder. In the event of a default hereunder or under the Funding Loan Note, the Fiscal Agent shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure. Nothing contained in the foregoing shall limit any rights or remedies the Governmental Lender or the Fiscal Agent may have against the Borrower.

ARTICLE VI

FURTHER AGREEMENTS

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

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

6.3. Books and Records. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Fiscal Agent, and subject to the provisions of Sections 4.1, 5.2 and 6.13 hereof, cause the Borrower to permit the Fiscal Agent or the Funding Lender or its duly Authorized Representatives access during normal business hours to the books and records of the Borrower pertaining to the Borrower Loan and the Development, and to make such books and records available for audit and inspection, at reasonable times and

under reasonable conditions to the Governmental Lender, the Fiscal Agent, the Funding Lender and their duly Authorized Representatives, and at the sole expense of the Borrower.

6.4. Notice of Certain Events. The Governmental Lender hereby covenants to advise the Fiscal Agent and the Funding Lender promptly in writing of the occurrence of any Event of Default under and as defined in the Borrower Loan Agreement, the Regulatory Agreement or the other Funding Loan Documents of which it has received written notice, or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default thereunder of which it has received written notice, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In Section 7.23.1 of the Borrower Loan Agreement, the Borrower has agreed to advise the Governmental Lender and the Funding Lender promptly in writing of the occurrence of any Event of Default (as defined in the Borrower Loan Agreement).

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

In the event of any acceleration of the payment of the principal amount of the Funding Loan Note, that portion of any interest payment in excess of the Maximum Rate shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount.

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

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

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

6.7. No Arbitrage. Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, the Governmental Lender shall not take, permit or suffer to be taken any action with respect to the proceeds of the Funding Loan Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Funding Loan Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations promulgated thereunder. The Governmental Lender covenants, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, to cause the Borrower to rebate to the United States Treasury any amounts which are required to be rebated thereto pursuant to the Code and any regulations promulgated thereunder with respect to the Funding Loan and the Borrower shall cause payment of an amount equal to excess investment earnings with respect to the Funding Loan, to the United States in accordance with the Regulations, all at the sole expense of the Borrower.

6.8. Limitation on Issuance Costs. The Governmental Lender shall assure, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, that, from the proceeds of the Funding Loan Note received from the Funding Lender and investment earnings thereon, an amount not in excess of 2% of the amount of the Funding Loan advanced by the Funding Lender shall be used to pay for or provide for the payment of costs associated with the issuance, execution and delivery of the Funding Loan Note. For this purpose, if the fees of the Funding Lender are retained as a discount on the purchase of the Funding Loan Note, such retention shall be deemed to be an expenditure of proceeds of the Funding Loan for said fees.

6.9. Federal Guarantee Prohibition. The Governmental Lender shall take no action nor, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, permit nor suffer any action to be taken if the result of the same would be to cause the Funding Loan Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

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

6.11. Use Covenant. Solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, the Governmental Lender shall not use or knowingly permit the use of any proceeds of the Funding Loan or any other funds of the Governmental Lender, directly or indirectly, in any

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

6.12. Limitation of Expenditure of Proceeds. The Governmental Lender shall assure, solely in reliance upon the covenants and representations of the Borrower in the Borrower Loan Agreement, in the Regulatory Agreement and in the Tax Certificate, that not less than 95% of the amount advanced on the Funding Loan, plus premium (if any) paid on the purchase of the Funding Loan Note by the original purchaser thereof from the Governmental Lender, less any original discount, are used for Qualified Project Costs (as defined in the Regulatory Agreement) and that less than 25% of such amount is used for land or an interest in land.

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

(a) not knowingly take or cause to be taken any action or actions, or knowingly fail to take any action or actions, which would cause the interest payable on the Funding Loan Note to be includable in gross income for federal income tax purposes;

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

(c) not knowingly take any action nor, solely in reliance of the covenants and representations of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement and the Tax Certificate, knowingly permit or suffer any action to be taken if the result of the same would be to cause the Funding Loan Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code of the Regulations.

For purposes of this Section 6.13 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on an opinion of Tax Counsel.

6.14. Immunities and Limitations of Responsibility of Governmental Lender.

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

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

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

(c) The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section 7.24 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement. Such indemnities shall survive payment of the Funding Loan and discharge of this Funding Loan Agreement.

ARTICLE VII

SECURITY

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

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

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

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

(d) Any and all other real or personal property of every kind and nature or description which may from time to time hereafter, by delivery or by writing of any kind, be subject to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent or which pursuant to any of the provisions hereof or the Borrower Loan Documents may come into the possession or control of the Governmental Lender; and

(e) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 7.1 for the payment of principal of, premium, if any, and interest on the Funding Loan 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 Funding Loan Note by the Governmental Lender. The Security so pledged and/or thereafter received by the Governmental Lender, the Bank or the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind whether in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

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

(a) The Borrower Note endorsed without warranty or recourse to the Funding Lender by the Governmental Lender;

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

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

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

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

ARTICLE VIII

AGENCY

8.1. Assignment of Authority. Solely for purposes of the administration of this Funding Loan Agreement, the Governmental Lender hereby vests the Fiscal Agent and the Funding Lender with full authority and power to act on its behalf for the purposes set forth herein as each is granted authority hereunder, and to do all other acts necessary or incidental to the performance and execution thereof, except for the Reserved Rights.

8.2. Authority of the Fiscal Agent and Bank; Notices to Governmental Lender. The Funding Lender is authorized and agrees to advance monies on behalf of the Governmental Lender to fund the Borrower Loan upon satisfaction of the conditions set forth in the Borrower Loan Agreement and otherwise to act on behalf of the Governmental Lender under the Borrower Loan Documents as expressly permitted hereunder and under the Borrower Loan Document, except for exercise of the Reserved Rights. Except for the Reserved Rights, the Funding Lender is hereby authorized, directed and empowered to exercise all the rights, powers or remedies of the Governmental Lender under the Borrower Loan Agreement and the other Borrower Loan Documents, and to make all determinations and exercise all options and elections thereunder, without the necessity of further advice or consultation with, or consent or authorization by, the Governmental Lender, and all actions taken by the Funding Lender under the Borrower Loan Agreement or any of the other Borrower Loan Documents shall be valid and shall have the same force and effect as if taken by the Governmental Lender. The Funding Lender shall have the right to exercise any rights and remedies conferred on the Governmental Lender pursuant to the Borrower Loan Documents (except for the Reserved Rights) as may be necessary or convenient to (i) enforce the payment of any amounts owing by the Borrower under the Borrower Loan Documents and prepayments thereof, or (ii) otherwise to protect the interest of the Governmental Lender, the Funding Lender or the Fiscal Agent upon a default by the Borrower under the Borrower

Loan Documents. The Fiscal Agent and the Funding Lender each agree to provide the Governmental Lender any notices given by it or delivered to it pursuant to the Borrower Loan Agreement regarding the occurrence of an Event of Default (as defined in the Borrower Loan Agreement), the acceleration of the Borrower Loan or the foreclosure of the Deed of Trust and shall provide written notice to the Governmental Lender of any amendment to the Borrower Note or the Borrower Loan Agreement. The Funding Lender shall have the right to collect all payments and other amounts received by the Governmental Lender from or on behalf of the Borrower pursuant to the Borrower Loan Agreement or the other Borrower Loan Documents, including prepayments thereof, except for payments of fees owing by the Borrower to the Governmental Lender in respect of the Reserved Rights.

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

8.4. Assignment of Rights. The Governmental Lender agrees that the Funding Lender shall have the right to assign all of its rights under this Agreement, and under all instruments and documents executed by the Governmental Lender pursuant to this Agreement, to an Affiliate of the Funding Lender, or to a subsequent owner of all of the Funding Loan Note and the Funding Loan as permitted under Section 4.3 herein or an Affiliate thereof. The Funding Lender will advise the Governmental Lender in writing of any such proposed assignment and, following delivery of its consent, the Governmental Lender will execute and deliver to the Funding Lender any documents (at the expense of the Funding Lender) necessary to effectuate such assignment in forms provided by the Funding Lender.

8.5. [Reserved].

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

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

ARTICLE IX

FUNDS AND ACCOUNTS

9.1. Authorization To Create Funds and Accounts. Except as provided in Section 9.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Bank and the Fiscal Agent are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Bank or the Fiscal Agent, pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

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

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

- (a) The Note Payment Fund;
- (b) The Project Fund;
- (c) The Expense Fund;
- (d) The Rebate Fund; and
- (e) The Closing Costs Fund.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent in trust for the benefit of the owner of the Funding Loan Note, and, except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, be subject to the lien hereof.

9.4. Note Payment Fund.

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

(b) The Fiscal Agent shall deposit into the Note Payment Fund any amounts received from the Borrower as payments of principal of or premium, if any, or interest on the Borrower Loan, any other amounts received by the Fiscal Agent that are subject to the

lien and pledge of this Funding Loan Agreement and any funds pledged to the Bank hereunder not required to be deposited to the Expense Fund or not otherwise specifically directed in writing by the Funding Lender to be deposited into other funds created by this Funding Loan Agreement.

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

First, to pay or provide for the payment of the interest then due on the Funding Loan;

Second, to pay or provide for the payment or the prepayment of principal on the Funding Loan, and any premium thereon, provided moneys have been transferred or deposited into the Note Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Funding Loan on its maturity date.

9.5. Expense Fund.

(a) The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Regulatory Agreement or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (i) the Governmental Lender's ongoing fee pursuant to Section 7(a) of the Regulatory Agreement (the "**Annual City Fee**") to the Government Lender as and when due, (ii) the Fiscal Agent amounts due pursuant to the definition of the Fiscal Agent's Fees herein, (iii) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (ii) hereof, and (iv) upon receipt, to, or at the direction of, the Governmental Lender, any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (i) hereof.

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

(c) Written notice of any insufficiency, which results in the Governmental Lender not receiving the Annual City Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date. Upon payment by the Borrower of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent to the Governmental Lender.

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

9.6. Project Fund.

(a) All proceeds of the Funding Loan provided by the Funding Lender shall, except for the initial draw on the Funding Loan on the Closing Date which shall be deposited directly with Old Republic Title Company, be deposited to the Project Fund and disbursed as herein provided. The Fiscal Agent shall use moneys in the Project Fund for the acquisition, rehabilitation, construction and equipping of the Development, to pay other permitted development costs and to pay other costs related to the Development as provided herein.

(b) Not less than 95% of the moneys deposited in and credited to the Project Fund, representing the proceeds of the Funding Loan, including any income earned thereon, will be expended for Qualified Project Costs (as defined in the Regulatory Agreement) (the “95% Requirement”). The amounts on deposit in the Project Fund shall not be applied to the payment of costs of issuance of the Funding Loan Note.

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

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

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

(ii) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Requisition signed only by the Funding Lender (and without any need for any signature by an Authorized Representative of the Borrower), 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.

(iii) The Fiscal Agent may conclusively rely on all Requisitions, the execution of the Requisitions by the Borrower and the approval of all Requisitions by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, which Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Development or the rehabilitation or construction work or to make any independent investigation with respect to the matters set forth in any Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, rehabilitation, construction, equipping, improvement and installation of the Development.

(e) Upon receipt of each Requisition submitted by the Borrower and approved in writing by the Funding Lender, the Fiscal Agent shall promptly, but in any case within one Business Day, make payment from the Project Fund in accordance with such Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 95% Requirement. The approval in writing of a Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent is concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Requisition constitute Qualified Project Costs or other permitted development costs.

(f) The Fiscal Agent shall immediately provide written notice to the Borrower, the Funding Lender and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the transfers as and when required by Section 9.6(e) above. Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or corporation to be paid, (ii) to the Borrower and such person, firm or corporation, or (iii) upon receipt by the Funding Lender and the Governmental Lender of evidence that the Borrower has previously paid such amount and written direction to the Fiscal Agent as to such as evidenced by the Funding Lender's and the Governmental Lender's approval of the Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the written consent of the Funding Lender, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Funding Loan. If a Requisition signed by the Borrower Representative and countersigned by the Funding Lender and the Governmental Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent

as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

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

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

(i) Prior to the Conversion Date, the Funding Lender shall disburse the Funding Loan directly to the Funding Lender to pay accrued interest due and payable on the Funding Loan Note and will provide written notice of the amount of such disbursement to the Fiscal Agent within three Business Days of the disbursement.

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

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

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

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

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

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

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

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

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

(i) The Fiscal Agent shall keep and make available to the Governmental Lender and the Borrower records concerning the investments of all funds held by the Fiscal Agent pursuant to the Funding Loan Agreement including date bought and sold, price and commission paid, and bids taken, if any, and shall keep all such records until six years after the date on which the Funding Loan Note is repaid in full in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

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

9.8. 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 of \$[_____]. Amounts in the Closing Costs Fund shall be disbursed by the Fiscal Agent to pay Closing Costs on the Closing Date or as soon as practicable thereafter as follows: (a) pay the Fiscal Agent its

closing fee of \$1,700 and (b) pay to the California Debt and Investment Advisory Commission (“CDIAC”) the CDIAC fee of up to \$[_____] upon receipt of an invoice therefor. Any interest earnings on amounts on deposit in the Closing Costs Fund shall remain in such 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 five months after the Closing Date shall be paid to the Borrower and the Closing Costs Fund shall be closed.

ARTICLE X

THE FISCAL AGENT

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

10.2. Certain Duties and Responsibilities of Fiscal Agent.

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

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

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

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

(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.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 10.2.

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

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

10.3. Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document, and provided that the Fiscal Agent is aware of or has received written notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.2 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 10.4(g) hereof, unless such default shall have been cured or waived.

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

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

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

(c) Whenever in the administration of this Funding Loan Agreement the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be

herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a written certificate of the Funding Lender or the Borrower, as appropriate;

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

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

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

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

10.5. Not Responsible for Recitals.

(a) The recitals contained herein and in the Funding Loan 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 revenues pledged hereunder, the Security or any part thereof, or

as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Funding Loan.

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

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

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

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

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

10.8. Compensation and Reimbursement.

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

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

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

(d) As security for the performance of the obligations of the Borrower under this Section 10.8 and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Security hereunder.

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

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

10.10. Resignation and Removal; Appointment of Successor.

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

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

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the written consent of the Funding Lender in its sole and absolute discretion, (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), subject to applicable notice and cure periods, with the written consent of the Funding Lender and the Governmental Lender in their sole and absolute discretion, or (iii) the Funding Lender with the written consent of the Governmental Lender and written notice delivered to the Fiscal Agent and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding

Lender. In case all or substantially all of the revenues pledged hereunder and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with written notice thereof delivered to the Governmental Lender, the Borrower, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

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

10.11. Acceptance of Appointment by Successor.

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

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

10.12. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business

of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article X, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause written notice of such succession to be delivered to the Funding Lender and the Governmental Lender within 30 days of such succession.

10.13. Appointment of Co-Fiscal Agent. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

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

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

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

ARTICLE XI

DEFAULTS UNDER BORROWER LOAN DOCUMENTS

11.1. Default Under Borrower Loan Agreement; Acceleration. No default by the Borrower under the Borrower Loan Agreement shall constitute an event of default with respect to the Funding Loan Note. The Governmental Lender's, the Fiscal Agent's and the Funding Lender's remedies with respect to a default under the Borrower Loan Documents shall be as set forth under the Borrower Loan Documents. The Funding Lender may, upon the acceleration of the Borrower's obligations under the Borrower Loan Documents, accelerate, or direct the Fiscal Agent to accelerate, the maturity of the Funding Loan Note and apply any funds available hereunder for such purpose as provided herein (after paying the fees and expenses of the Fiscal Agent and the Governmental Lender). The Funding Loan Note shall be deemed paid upon transfer, to or at the direction of the Funding Lender, of the Borrower Loan Documents and all Security therefor free and clear of the lien of this Funding Loan Agreement.

The Governmental Lender shall cooperate with the Funding Lender and the Fiscal Agent in exercising rights and remedies under the Funding Loan Documents and the Borrower Loan Documents, but only upon being satisfactorily indemnified by the Borrower for any fees or expenses relating thereto as provided in the Borrower Loan Agreement and Regulatory Agreement.

11.2. Actions Under Borrower Loan Documents. Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forebear any term, condition, covenant or agreement in the Borrower Loan Documents applicable to the Borrower or any breach thereof, other than the covenant that would adversely impact the tax-exempt status of the interest on the Funding Loan Note and provided that the Funding Lender shall have no right to waive and the Governmental Lender may seek specific performance by the Borrower to enforce the Reserved Rights. With respect to any of its Reserved Rights, the Governmental Lender may exercise such rights as permitted by Section 18 of the Regulatory Agreement in connection with a default thereunder.

ARTICLE XII

MISCELLANEOUS

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

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

If to the Governmental Lender: City of San José
Finance Department

200 East Santa Clara Street, 13th Floor Tower
San José, CA 95113-1905
Attention: Debt Management
Facsimile: (408) 292-6482

with a copy to
(which shall not constitute notice
to the Governmental Lender):

City of San José
Department of Housing
200 East Santa Clara Street, 12th Floor Tower
San José, CA 95113-1905
Attention: Director of Housing
Facsimile: (408) 998-3183

with a copy to
(which shall not constitute notice
to the Governmental Lender):

City of San José
Office of the City Attorney
200 East Santa Clara Street
San José, CA 95113
Attention: Housing Attorney
Telephone: (408) 535-1900
Facsimile: (408) 998-3131

And a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Toger Swanson, Esq.
Facsimile: (402) 346-1148

If to the Borrower:

Palm Court San Jose, L.P.
c/o EAH Housing Inc.
22 Pelican Way
San Rafael, CA 94901
Attention: Welton Jordan
Email: Welton.jordan@eahhousing.org

with a copy to:

Bocarsly, Emden, Cowan, Esmail & Arndt LLP
633 West 5th Street, 64th Floor
Los Angeles, CA 90071
Attention: Nicole Deddens
Email: ndeddens@bocarsly.com

with a copy to: MCC Housing LLC
c/o Merritt Community Capital Corp.
1970 Broadway, Suite 250
Oakland, CA 94612
Attention: President & CEO

If to the Funding Lender: MUFG Union Bank, N.A.
Loan Administration Department
145 South State College Blvd., Suite 600
Brea, CA 92821
Attention: Manager
Facsimile: (323) 720-2433

with a copy to: MUFG Union Bank, N.A.
Community Development Finance Department
200 Pringle Avenue, Suite 355
Walnut Creek, CA 94596
Attention: CDF Division Head
Facsimile: (925) 947-2455

If to the Fiscal Agent: U.S. Bank National Association
One California Street, Suite 1000
San Francisco, CA 94111
Attention: Global Corporate Trust Services
Ref: SJ MF (Palm Court Apartments 2019D)
Facsimile: (415) 677-3769

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

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

12.5. Execution of Counterparts. This Funding Loan Agreement 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.

12.6. Amendments, Changes and Modifications. Except as otherwise provided in this Funding Loan Agreement, this Funding Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto. The Funding Lender may require, as a condition to any amendment, change or modification of this Funding Loan Agreement or the other Funding Loan Documents, that the Funding Lender shall

have received, at the expense of the Borrower, an opinion of Tax Counsel that such amendment shall not adversely affect the exclusion of interest on the Funding Loan Note from gross income for purposes of federal income tax.

12.7. Governing Law. This Funding Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State and any legal action brought hereunder must be instituted in a court located within the County of Santa Clara, California.

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

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

[Remainder of Page Intentionally Left Blank]

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

CITY OF SAN JOSÉ, as Governmental Lender

By: _____
Name: [Julia H. Cooper or Lisa C. Taitano]
Title: [Finance Director or Assistant Finance Director]

ATTEST:

By: _____
Toni J. Taber CMC, City Clerk

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

[Issuer Signature Page to *Palm Court* Funding Loan Agreement]

MUFG UNION BANK, N.A., in its capacity as
Bank and Funding Lender

By _____
Name: Joshua Evju
Title: Director

[Bank and Funding Lender Signature Page to *Palm Court* Funding Loan Agreement]

U.S. BANK NATIONAL ASSOCIATION, as
Fiscal Agent

By _____
Name: Andrew Fung
Title: Vice President

[Fiscal Agent Signature Page to *Palm Court* Funding Loan Agreement]

EXHIBIT A

FORM OF FUNDING LOAN NOTE

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

**CITY OF SAN JOSÉ
MULTIFAMILY HOUSING REVENUE NOTE
(PALM COURT APARTMENTS)
SERIES 2019D**

FOR VALUE RECEIVED, the CITY OF SAN JOSÉ, a charter city and municipal corporation of the State of California (the “**Governmental Lender**”), acknowledges itself indebted hereby promises to pay to the order of MUFG UNION BANK, N.A. (the “**Bank**”), or its successors and assigns, the sum of [_____] DOLLARS (\$[16,000,000]), together with interest on the advanced and unpaid principal amount of this City of San José Multifamily Housing Revenue Note (Palm Court Apartments) Series 2019D (this “**Funding Loan Note**”) at the same interest rate as the applicable interest rate specified in the Borrower Loan Agreement (as hereinafter defined) with respect to the Borrower Loan, not exceeding the Maximum Rate, until the Governmental Lender’s obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The “**Outstanding Balance**” as of any date of calculation shall mean the principal balance of the Funding Loan that has not been repaid by the Governmental Lender to the Bank as of the date of calculation of the Outstanding Balance. This Funding Loan Note shall be governed by and be payable in accordance with the terms and conditions of the Funding Loan Agreement dated as of [September] 1, 2019 (the “**Funding Loan Agreement**”) among U.S. Bank National Association (the “**Fiscal Agent**”), the Governmental Lender and the Bank, in its capacity as lender, pursuant to which the Bank has made the Funding Loan to the Governmental Lender.

This Funding Loan Note is issued to evidence the Funding Loan by the Bank to the Governmental Lender and the obligation of the Governmental Lender to repay the same, but only from amounts received by or on behalf of the Governmental Lender from Palm Court San Jose, L.P., a California limited partnership (the “**Borrower**”), pursuant to a Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program) dated as of [September] 1, 2019, by and among the Governmental Lender, the Bank and the Borrower (the “**Borrower Loan Agreement**”) and the other Borrower Loan Documents (as defined in the Borrower Loan Agreement).

Monthly payments of principal and interest shall be due and payable under this Funding Loan Note in the same amounts and on the same dates as payments of principal and interest are

due and payable on the Borrower Note, as provided in the Borrower Loan Agreement. The Outstanding Balance of this Funding Loan Note shall be due and payable in its entirety on [] 1, 20[].

The Funding Loan and this Funding Loan Note are pass-through obligations relating to the Borrower Loan made by the Governmental Lender from the proceeds of the Funding Loan to the Borrower under the Borrower Loan Agreement. Reference is hereby made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note.

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

The Governmental Lender may, at any time, prepay the principal amount of this Funding Loan Note to the same extent and subject to the same terms and conditions set forth in the Borrower Loan Agreement for the prepayment of the Borrower Loan (including any provisions for the payment of any prepayment premium, fee or penalty).

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

THIS FUNDING LOAN NOTE IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER, PAYABLE SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND 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 IN THE FUNDING LOAN AGREEMENT) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THIS FUNDING LOAN NOTE AND THE FUNDING LOAN OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO EXCEPT AS SET FORTH IN THE FUNDING LOAN AGREEMENT, AND NONE OF THE FUNDING LOAN OR THIS FUNDING LOAN NOTE OR ANY OF THE GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE FUNDING LOAN, THIS FUNDING LOAN 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.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS FUNDING LOAN NOTE AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, BOARD MEMBER, EMPLOYEE OR AGENT OF THE GOVERNMENTAL LENDER, OR OF ANY SUCCESSOR TO THE GOVERNMENTAL LENDER, AS SUCH, EITHER DIRECTLY OR THROUGH THE GOVERNMENTAL LENDER OR ANY SUCCESSOR TO THE GOVERNMENTAL LENDER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS FUNDING LOAN NOTE.

THIS FUNDING LOAN NOTE HAS BEEN ISSUED IN ACCORDANCE WITH THE ACT.

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

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

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

THIS FUNDING LOAN NOTE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 4.3 OF THE FUNDING LOAN AGREEMENT,

AND ANY SUCH TRANSFER SHALL BE RECORDED IN THE NOTE REGISTER MAINTAINED BY THE FISCAL AGENT.

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

IN WITNESS WHEREOF, the undersigned has caused this Funding Loan Note to be executed and delivered by its authorized representative all as of the ____ day of _____, 2019.

CITY OF SAN JOSÉ, as Governmental Lender

By _____
[Name][Title]

FORM OF CERTIFICATE OF AUTHENTICATION

This is the Funding Loan Note described in the within-mentioned Funding Loan Agreement and has been authenticated and registered on _____.

U.S. BANK NATIONAL ASSOCIATION, as
Fiscal Agent

By _____
Name _____
Title _____

EXHIBIT B

FORM OF REPRESENTATION LETTER

City of San José
San José, California

Kutak Rock LLP
Omaha, Nebraska

U.S. Bank National Association
San Francisco, California

\$[16,000,000]
City of San José
Multifamily Housing Revenue Note
(Palm Court Apartments)
Series 2019D

Ladies and Gentlemen:

The undersigned (the “Holder”) hereby represents and warrants to you as follows:

1. The Holder [proposes to make] [has made] [has acquired] a loan in an aggregate principal amount not to exceed the amount set forth in the above-captioned note (the “Funding Loan Note”) issued pursuant to that certain Funding Loan Agreement dated as of [September] 1, 2019 (the “Funding Loan Agreement”) by and among the City of San José, California (the “Governmental Lender”), U.S. Bank National Association, as Fiscal Agent, and MUFG Union Bank, N.A., as lender (the “Bank”). The Holder understands that the Funding Loan Note is not rated by any rating agency and is secured only by the Palm Court Apartments and the revenues therefrom, and will be sold to the Holder with the only above-addressed parties relying upon the representations and warranties of the Holder set forth herein. The Holder acknowledges that no offering document has been prepared in connection with the making of the Funding Loan. The Holder has requested and received all materials which the Holder has deemed relevant in connection with its making of the Funding Loan (the “Due Diligence Information”). The Holder has reviewed the documents executed in conjunction with the making of the Funding Loan Note, including, without limitation, the Funding Loan Agreement and the Borrower Loan Agreement.

2. The Holder hereby waives the requirement of any “due diligence investigation or inquiry” by the Governmental Lender, by each official of the Governmental Lender, by each employee of the Governmental Lender, by each member of the governing board of the Governmental Lender, and by counsel to the Governmental Lender, the Fiscal Agent, counsel to the Fiscal Agent, the Bank, counsel to the Bank and Tax Counsel in connection with the authorization, execution and delivery of the Funding Loan Note and Holder’s making the Funding Loan. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender each employee of the Governmental

Lender, each member of the governing board of the Governmental Lender, counsel to the Governmental Lender, the Fiscal Agent, counsel to the Fiscal Agent, the Bank, counsel to the Bank and Tax Counsel relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Funding Loan Note, nor has it looked to or expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Funding Loan Note.

3. The Holder has been provided an opportunity to ask questions of, and the Holder has received answers from, representatives of the Governmental Lender and the Borrower regarding the terms and conditions of the Funding Loan Note, and the Holder has obtained all additional information requested by it in connection with the Funding Loan Note.

4. The Holder has sufficient knowledge and experience in business and financial matters in general, and making loans such as the Funding Loan in particular, and is capable of evaluating the merits and risks involved in making the Funding Loan. The Holder is able to bear the economic risk of, and an entire loss of funds advanced under, the Funding Loan Note.

5. The Holder is [making] [purchasing] the Funding Loan solely for its own account and has no present intention to resell or distribute the Funding Loan Note, provided that the Holder reserves the right to transfer or dispose of the Funding Loan Note, at any time, and from time to time, in its complete and sole discretion, subject, however, to the restrictions described in paragraphs 6 through 8 of this Letter. The Holder hereby agrees that the Funding Loan Note may only be transferred in whole and in accordance with the Funding Loan Agreement, including Article IV thereof, to a single holder, which must execute and deliver to the parties addressed above a form of this Representation Letter.

6. The Holder agrees that it will offer, sell, pledge, transfer or exchange the Funding Loan Note (or any legal or beneficial interest therein) only (i) in accordance with an available exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), (ii) in accordance with any applicable state securities laws, and (iii) in accordance with the transfer restrictions set forth in the Funding Loan Note and the Funding Loan Agreement. The Holder acknowledges that written consent of the Governmental Lender is required in order to transfer the Funding Loan Note.

7. The Holder is: (a) a "qualified institutional buyer" as defined in Rule 144A ("Rule 144A") promulgated under the Securities Act; (b) an entity that is directly or indirectly wholly owned or controlled by the Bank (being a financial institution described in (a) above); (c) an entity all of the investors in which are described in (a) or (b) above; or (d) a custodian or trustee for a party described in (a), (b) or (c) above.

8. If the Holder transfers the Funding Loan (or any legal or beneficial interest therein), the Holder or its agent will obtain for the benefit of each of you from any subsequent holder an Investor Letter in the form of this Letter or such other materials as are required by the Funding

Loan Note and the Funding Loan Agreement to effect such sale and purchase. The Holder understands and agrees that the Fiscal Agent is not authorized to register any transfer of the Funding Loan Note prior to receipt of such letter.

9. Neither the Bank, the Fiscal Agent, Tax Counsel, counsel to the Governmental Lender, the Governmental Lender, its governing body, or any of its employees or agents will have any responsibility to the Holder for the accuracy or completeness of information obtained by the Holder from any source regarding the Development, the Governmental Lender or the Borrower or their financial conditions or regarding the Funding Loan Note, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Due Diligence Information. The Holder acknowledges that, as between Holder and all of such parties: (a) the Holder has assumed responsibility for obtaining such information and making such review as the Holder has deemed necessary or desirable in connection with its decision to make the Funding Loan; and (b) the Due Diligence Information and any additional information specifically requested from the Governmental Lender or the Borrower and provided to the Holder prior to closing constitute all the information and review, with the investigation made by Holder (including specifically the Holder's investigation of the Governmental Lender, the Development and the Borrower) prior to its making the Funding Loan, that Holder has deemed necessary or desirable in connection with its decision to make the Funding Loan.

10. The Holder understands that (a) the Funding Loan Note has not been registered with any federal or state securities agency or commission, and (b) no credit rating has been sought or obtained with respect to the Funding Loan Note, and the Holder acknowledges that the Funding Loan Note is speculative with a high degree of risk.

11. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of the Funding Loan Note 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 the 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).

12. The Holder acknowledges that the Funding Loan Note is a limited obligation of the Governmental Lender, payable solely from the revenues or other amounts provided by or at the direction of the Borrower, and is not an obligation payable from the general revenues or other funds of the Governmental Lender, the State of California or any political subdivision of the State of California. The Holder acknowledges that the Governmental Lender is issuing the Funding Loan Note on a conduit, nonrecourse basis and has no continuing obligations with respect thereto except as expressly set forth in the Funding Loan Agreement.

13. The Holder has the authority to make the Funding Loan and to execute this letter and other documents and instruments required to be executed by the Holder in connection with making the Funding Loan. The individual who is executing this letter on behalf of the undersigned is a duly appointed, qualified and acting officer of the Holder and authorized to cause the Holder

to make the certifications, representations and warranties contained herein by the execution of this letter on behalf of the Holder.

15. The Holder acknowledges that no offering document has been produced in connection with the Funding Loan.

16. The Holder agrees to indemnify and hold harmless the Fiscal Agent and the Governmental Lender, each employee of the Governmental Lender, each member of the governing board of the Governmental Lender, counsel to the Governmental Lender, the Fiscal Agent, counsel to the Fiscal Agent, and each person who controls the Fiscal Agent or the Governmental Lender within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively called the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses (including any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions) whatsoever arising out of any sale, transfer or other disposition of the Funding Loan, or any interest therein, by Holder in violation of the provisions hereof. No Indemnified Parties other than the Governmental Lender and its members, officers and employees shall be indemnified hereunder for any losses, claims, damages or liabilities resulting from the gross negligence of such Indemnified Parties. No Indemnified Party shall be indemnified hereunder for any losses, claims, damages or liabilities resulting from the willful misconduct of such parties.

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

Very truly yours,

MUFG UNION BANK, N.A., as Holder

By: _____

Name: Joshua Evju

Title: Director

[Signature Page to Representation Letter]

EXHIBIT C

FORM OF PROJECT FUND REQUISITION

Draw # _____

U.S. Bank National Association
One California Street, Suite 1000
San Francisco, CA 94111
Attention: Global Corporate Trust Services

Re: City of San José Multifamily Housing Revenue Note (Palm Court Apartments),
Series 2019D

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of [September] 1, 2019 (the “Funding Loan Agreement”) among MUFG Union Bank, N.A. (the “Funding Lender”), the City of San José (the “Governmental Lender”) and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”) pursuant to which the above-referenced note (the “Funding Loan 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 Project Fund as Draw # _____ pursuant to Section 9.6 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference.

2. The undersigned certifies that:

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

(ii) 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, rehabilitation, construction or equipping of the Development, 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) this Requisition contains no items representing any costs of issuance of the Funding Loan Note or any other amount constituting an issuance cost under Section 147(g) of the Code and payment of the costs referenced herein will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement or the Tax Certificate;

(v) not less than 95% of the sum of (a) the amounts requisitioned by this Requisition to be funded from the Project Fund plus (b) all amounts previously disbursed from the Project Fund have been or will be applied by the Borrower to pay Qualified Project Costs (as defined in the Regulatory Agreement);

(vi) 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

(vii) 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: _____, 20__

PALM COURT SAN JOSE, L.P.,
a California limited partnership

By: Palm Court San Jose LLC, a California
limited liability company, its sole and
managing general partner

By: EAH, Inc., a California nonprofit
public benefit corporation, its
managing and sole member

By _____
Welton Jordan, Assistant
Secretary

MUFG UNION BANK, N.A.

By: _____
Title: _____
Date: _____

SCHEDULE I TO PROJECT FUND REQUISITION