

**LOAN AGREEMENT**

among

**PACIFIC WESTERN BANK,  
as Bank**

**CITY OF SAN JOSE, CALIFORNIA,  
as Governmental Lender**

and

**U.S. BANK NATIONAL ASSOCIATION,  
as Fiscal Agent**

dated as of January 1, 2022

relating to:

**\$31,341,010**

**City of San José, California**

**Multifamily Housing Revenue Note**

**(Mariposa Place), Series 2021E-1 (Tax-Exempt)**

and

**\$4,658,990**

**City of San José, California**

**Multifamily Housing Revenue Note**

**(Mariposa Place), Series 2021E-2 (Taxable)**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of January 1, 2022 (this "Bank Loan Agreement"), is by and between PACIFIC WESTERN BANK, a California state-chartered bank (the "Bank"), the CITY OF SAN JOSE, CALIFORNIA, a municipal corporation and charter city organized and existing under its charter and the laws of the State of California (together with its successors and assigns, the "Governmental Lender") and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as fiscal agent (together with its successors and assigns, the "Fiscal Agent").

### *RECITALS*

WHEREAS, pursuant to Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California, the Governmental Lender is empowered to incur indebtedness to finance the acquisition and construction of multifamily rental housing for persons of low and moderate income; and

WHEREAS, San Jose W. San Carlos LP, a California limited partnership (the "Borrower"), has requested that the Governmental Lender enter into this Loan Agreement under which the Bank (i) will advance funds (the "Bank Loan") to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Bank Loan to make a loan (the "Borrower Loan") to the Borrower to finance the acquisition and construction of an 80 unit (including one manager's unit) multifamily rental housing development located in the City of San José, State of California, to be known as "Mariposa Place" (the "Project"); and

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

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Notes (as defined herein), and the obligations of the Borrower under the Borrower Notes will be secured by a lien on and security interest in the Project pursuant to a Deed of Trust, Security Agreement, Absolute Assignment of Leases and Rents and Fixture Filing of even date herewith made by the Borrower in favor of the Governmental Lender, as assigned by the Governmental Lender without recourse to the Bank to secure the performance by the Governmental Lender of its obligations under the Bank Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Bank its Governmental Lender Notes (as defined herein), evidencing its obligation to make the payments

due to the Bank on the Bank Loan as provided in this Loan Agreement, and all things necessary to make this Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender have been done and performed and the execution and delivery of this Loan Agreement and the execution and delivery of the Governmental Lender Notes, subject to the terms hereof, have in all respects been duly authorized.

#### *AGREEMENT:*

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

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

Section 1.01. 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 in effect on the Closing Date, as the same may be amended from time to time (but only to the extent any such amendments, by their terms or by appropriate election of the Governmental Lender, apply to the Governmental Lender Notes as of the effective date of such amendments).

"Act of Bankruptcy" has the meaning given to such term in the Borrower Loan Agreement.

"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 (1) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act"); (2) an "accredited investor" as defined in paragraphs (1) through (3) of subsection (a) of Section 501 ("Section 501") of Regulation D promulgated under the Securities Act; (3) an entity that is directly or indirectly wholly owned or controlled by a financial institution described in (1) above; (4) an entity all of the investors in which are described in (1), (2) or (3) above; or (5) a custodian or trustee for a party described in (1), (2) or (3) above.

"Assignment Agreement" means that certain Assignment Agreement, dated as of January 1, 2022, by and between the Bank and the Governmental Lender, as referenced in Section 6.06 of this Bank Loan Agreement and Section 6.08 of the Borrower Loan Agreement.

"Authorized Governmental Lender Representative" means the Governmental Lender's City Manager, Director of Housing, Director of Finance, Assistant Director of Finance, Deputy Director, Debt and Treasury Management, and any other officer or employee of the Governmental Lender

designated to perform a specified act, to sign a specified document or to act generally, on behalf of the Governmental Lender by a written certificate furnished to the Fiscal Agent and the Bank, which certificate is signed by an already-designated Authorized Governmental Lender Representative and contains the specimen signature of such other officer or employee of the Governmental Lender.

“Bank” means Pacific Western Bank, and its successors and assigns.

“Bank Loan” means the mortgage loan originated hereunder by the Bank to the Governmental Lender initially in a maximum principal amount of \$36,000,000, evidenced by the Governmental Lender Notes, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of the Borrower Loan Agreement.

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

“Bank Loan Documents” means this Bank Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Governmental Lender Notes, the Assignment Agreement, the Borrower Notes, the Borrower Assignments, and the Deed of Trust.

“Bank Loan Payment Fund” shall mean the fund by that name established pursuant to Section 8.03 hereof.

“Borrower” means San Jose W. San Carlos LP, a California limited partnership, and its successors and assigns.

“Borrower Assignments” means, collectively, the Assignment of Development Agreement and Developer Fee Subordination Agreement, dated as of January 1, 2022, by the Borrower and the Developer for the benefit of the Bank; the Environmental Indemnity Agreement, dated as of January 1, 2022, by the Borrower and the Guarantor in favor of the Bank; the Guaranty of Payment and Performance, dated as of January 1, 2022, by the Guarantor in favor of the Bank; the Continuing Covenant Agreement; the Disbursement Agreement; the Assignment of Construction Contracts, dated as of January 1, 2022, by the Borrower in favor of the Bank; the Assignment of Management Contracts and Subordination of Management Fees, dated as of January 1, 2022, by the Borrower in favor of the Bank; and the Assignment of Development Agreement and Developer Fee Subordination Agreement, dated as of January 1, 2022, by the Borrower and the Developer in favor of the Bank.

“Borrower Loan” means the mortgage loan originated by the Governmental Lender to the Borrower, pursuant to the terms of the Borrower Loan Agreement, in a maximum principal amount of \$36,000,000, evidenced by the Borrower Notes.

"Borrower Loan Agreement" means that certain Loan Agreement, dated as of January 1, 2022, by and between the Governmental Lender and the Borrower, pursuant to which the Borrower Loan is being made, as amended and supplemented from time to time.

"Borrower Notes" means, collectively, the Borrower Tax-Exempt Note and the Borrower Taxable Note, and a "Borrower Note" shall mean one of such Borrower Notes.

"Borrower Representative" means any officer of the general partner of the Borrower designated by action of the Borrower to be a Borrower Representative for purposes of the Loan Documents.

"Borrower Taxable Note" shall mean that certain Multifamily Note dated the Closing Date in the original maximum principal amount of \$4,658,990 made by Borrower and payable to Governmental Lender, as endorsed and assigned without recourse to the Bank, as it may be amended, supplemented or replaced from time to time.

"Borrower Tax-Exempt Note" shall mean that certain Multifamily Note dated the Closing Date in the original maximum principal amount of \$31,341,010 made by Borrower and payable to Governmental Lender, as endorsed and assigned without recourse to the Bank, as it may be amended, supplemented or replaced from time to time.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which the Bank is closed.

"CDLAC" means the California Debt Limit Allocation Committee.

"City" means the City of San José, California.

"Closing Costs Fund" shall mean the fund by that name established pursuant to Section 8.03 hereof.

"Closing Date" means January \_\_, 2022, being the date of execution and delivery of Governmental Lender Notes, and upon which the Governmental Lender Tax-Exempt Note is initially funded in an amount equal to at least \$50,001.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Governmental Lender Notes and (except as otherwise referenced herein) as it may be amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Continuing Covenant Agreement" means the Continuing Covenant Agreement, dated as of January 1, 2022, between the Bank and the Borrower, as amended and supplemented from time to time in accordance with its terms.

“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” has the meaning given to such term in the Continuing Covenant Agreement.

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

“Deed of Trust” means the Deed of Trust, Security Agreement, Absolute Assignment of Leases and Rents and Fixture Filing, dated as of January 1, 2022, executed by the Borrower and granting a security interest in the Project, to First American Title Company, as trustee, for the benefit of the Governmental Lender, in order to secure the Borrower’s obligations under the Borrower Notes to repay the Borrower Loan and all obligations related thereto under the Borrower Loan Agreement.

“Developer” means Danco Communities, a California corporation.

“Disbursement Agreement” means the Construction Disbursement Agreement, dated as of January 1, 2022, between the Bank and the Borrower, as amended and supplemented from time to time in accordance with its terms.

“Equity Investor” means Raymond James California Opportunities Fund XI L.L.C., and its successors and assigns.

“Event of Default” means any of the events described as an event of default in Section 7.01 hereof.

“Expense Fund” shall mean the fund by that name established pursuant to Section 8.03 hereof.

“Government Obligations” means United States Treasury notes, bonds and bills, including State and Local Government Series.

“Governmental Lender” means the City, and its successors and assigns under this Bank Loan Agreement.

“Governmental Lender Notes” means, collectively, the Governmental Lender Tax-Exempt Note and the Governmental Lender Taxable Note, and a “Governmental Lender Note” means one of such Governmental Lender Notes.

“Governmental Lender Taxable Note” means that certain City of San José, California Multifamily Housing Revenue Note (Mariposa Place), Series 2021E-2 (Taxable), dated the Closing

Date, evidencing the Bank Loan, in the principal amount of \$4,658,990, made by the Governmental Lender and payable to the Bank in the form attached hereto as Exhibit A, as executed by the Governmental Lender on the Closing Date as it may thereafter be amended or supplemented from time to time.

"Governmental Lender Tax-Exempt Note" means that certain City of San José, California Multifamily Housing Revenue Note (Mariposa Place), Series 2021E-1 (Tax-Exempt), dated the Closing Date, evidencing the Bank Loan, in the principal amount of \$31,341,010, made by the Governmental Lender and payable to the Bank in the form attached hereto as Exhibit A, as executed by the Governmental Lender on the Closing Date as it may thereafter be amended or supplemented from time to time.

"Guarantor" has the meaning given that term in the Borrower Loan Agreement.

"Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating category given by that rating agency for that general category of security (without regard for outlook or watch status). By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is "A1+" for debt with a term of one year or less and "AAA" for a term greater than one year, with corresponding ratings by Moody's of "MIG1" (for fixed rate) or "VMIG1" (for variable rate) for three months or less and "Aaa" for greater than three months. If at any time (a) both S&P and Moody's rate a Permitted Investment and (b) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category only if the lower rating is no more than one rating category (without regard for outlook or watch status) below the highest rating category of that rating agency. For example, a Permitted Investment rated "AAA" by S&P and "Aa3" by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated "AAA" by S&P and "A1" by Moody's is not rated in the Highest Rating Category.

"Initial Disbursement" means the initial advance of the principal of the Bank Loan on the Closing Date in respect of Governmental Lender Tax-Exempt Note, in the amount specified by the Bank on the Closing Date (which shall be an amount no less than \$50,001).

"Loan Documents" has the meaning given to such term in the Borrower Loan Agreement.

"Maximum Legal Rate" shall mean the lesser of (i) 12% per annum, and (ii) the maximum interest rate that may be paid on the Bank Loan under State law.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

"Note Proceeds Account" shall mean the account by that name in the Project Fund established pursuant to Section 8.03 hereof.

“Ongoing Governmental Lender Fee” shall mean the Annual City Fee, as defined in Section 7(a) of the Regulatory Agreement.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Bank and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required after the Closing Date to address the exclusion of interest on the Governmental Lender Tax-Exempt Note from gross income for purposes of federal income taxation, such opinion shall be a Tax Counsel No Adverse Effect Opinion.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Bank Loan Agreement, but only to the extent that the same are acquired at fair market value:

- (a) Government Obligations.
- (b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.
- (c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.
- (d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short-term obligations are rated in the Highest Rating Category.
- (e) Commercial paper rated in the Highest Rating Category.
- (f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers’ acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution’s unsecured short term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully collateralized by investments described in clauses (a) or (b) of this definition or fully insured by the Federal Deposit Insurance Corporation.
- (g) An agreement held by the Fiscal Agent for the investment of moneys at a guaranteed rate with a Qualified Financial Institution whose unsecured long term

obligations are rated in the Highest Rating Category or Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to the Bank and the Fiscal Agent; and provided further that such agreement includes the following restrictions:

(1) the invested funds will be available for withdrawal without penalty or premium, at any time that the Fiscal Agent is required to pay moneys from the fund(s) established under this Bank Loan Agreement to which the agreement is applicable;

(2) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks *pari passu* with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

(3) the Bank and the Fiscal Agent receive an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

(4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any rating agency or falls below the Second Highest Rating Category, the provider must, within ten days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Fiscal Agent or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Bank, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Fiscal Agent or a third party custodian, in an amount reasonably satisfactory to the Bank, (B) at the request of the Bank, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations are then rated in the Highest Rating Category or Second Highest Rating Category. The agreement may provide that the downgraded

provider may elect which of the remedies to the down grade (other than the remedy set out in (B)) to perform.

Notwithstanding anything else in this paragraph (g) to the contrary and with respect only to any agreement described in this paragraph (g) or any guarantee or insurance for any such agreement which is to be in effect for any period after the Conversion Date, any reference in this paragraph to the "Second Highest Rating Category" will be deemed deleted so that the only acceptable rating category for such an agreement, guarantee or insurance will be the Highest Rating Category.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Bank or the Fiscal Agent or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated "AAAm G" or "AAAm" by S&P or "Aaa" by Moody's so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Bank, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c). The money market mutual fund must be rated "AAAm G" or "AAAm" by S&P, or "Aaa" by Moody's. If at any time (i) both S&P and Moody's rate a money market mutual fund and (ii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Bank.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (1) shall not apply to Permitted Investments listed in paragraphs (g) and (i).

(2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation.

(3) Any asset backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset backed securities and auto loan asset backed securities.

(4) Any interest only or principal only stripped security.

(5) Any obligation bearing interest at an inverse floating rate.

(6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

(8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

(9) Any investment to which S&P has added an "r" or "t" highlighter.

"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.

"Prepayment Premium" shall mean an amount equal to the amount of the Prepayment Premium, as such term in the Borrower Loan Agreement.

"Project" means, that residential rental facility consisting of a total of 80 units (including one manager's unit) multifamily rental housing development located in the City to be known as "Mariposa Place."

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

"Qualified Project Costs" has the meaning given to such term in the Regulatory Agreement.

"Qualified Project Period" has the meaning given to such term in the Regulatory Agreement.

"Rebate Analyst" means any certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected by and at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the computations required by Section 6.12(f) and 8.08 of this Bank Loan Agreement and Section 6.14(j) and (k) of the Borrower Loan Agreement.

"Rebate Fund" shall mean the fund by that name established pursuant to Section 8.03 hereof and administered in accordance herewith.

"Regulations" means the income tax regulations promulgated by the United States Department of the Treasury from time to time pursuant to the Code.

"Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date hereof, by and between the Governmental Lender and the Borrower, as executed on the Closing Date, and as hereafter amended or modified in accordance with its terms.

"Responsible Officer" of the Fiscal Agent shall mean any officer of the Fiscal Agent assigned to administer its respective duties under this Bank Loan Agreement.

"S&P" shall mean S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, or its successors.

"Second Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the second highest rating category given by that rating agency (without regard for outlook or watch status) for that general category of security. By way of example, the Second Highest Rating Category for tax-exempt municipal debt established by S&P is "AA" for a term greater than one year, with corresponding ratings by Moody's of "Aa." If at any time (a) both S&P and Moody's rate a Permitted Investment and (b) one of those ratings is below the Second Highest Rating Category (without regard for outlook or watch status), then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

"Security" shall mean the security for the Governmental Lender Notes assigned to the Bank pursuant to the Assignment Agreement.

“State” means the State of California.

“Subordination Agreement” has the meaning given to such term in the Continuing Covenant Agreement.

“Tax Certificate” shall mean the Certificate as to Arbitrage and Tax Compliance Procedures, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower.

“Tax Counsel” shall mean Quint & Thimmig LLP, or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Bank having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

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

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

“Title Company” shall mean First American Title Insurance Company.

“Written Requisition” or “Written Notice” shall mean a written certificate, direction, notice, order or requisition signed by a Borrower Representative, an Authorized Governmental Lender Representative or an authorized representative of the Bank, as applicable.

Section 1.02. 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 Bank 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.

Section 1.03. Recitals, Titles and Headings. The terms and phrases used in the recitals of this Bank 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 Bank Loan Agreement shall be determined by references to Section 1.01 hereof. The titles and headings of the Articles and Sections of this Bank 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 Bank Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the Governmental Lender. The Governmental Lender makes the following representations as of the Closing Date:

(a) The Governmental Lender is a municipal corporation and charter city organized and existing under its charter and the laws of the State.

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

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

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

(e) The Governmental Lender has not been served with any action, suit, proceeding, inquiry or investigation or, to the knowledge of the Governmental Lender, no action, suit, proceeding, inquiry or investigation is threatened against the Governmental Lender by or before any court, governmental agency or public board or body which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the City Council of the Governmental Lender; (ii)

affects or seeks to prohibit, restrain or enjoin the execution and delivery of the Bank Loan Documents to which the Governmental Lender is a party, or the loaning of the Bank Loan as herein set forth; (iii) affects or questions the validity or enforceability of the Bank Loan Documents; or (iv) questions the power or authority of the Governmental Lender to carry out the transactions on its part contemplated by the Bank Loan Documents.

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

(g) 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 Bank Loan Agreement, except as expressly permitted or contemplated by the Bank Loan Documents.

(h) CDLAC has provided, in its Resolution No. 21-180 adopted August 11, 2021, \$31,341,010 of the State of California's 2021 private activity bond volume cap under section 146 of the Code to the Governmental Lender for the Governmental Lender Tax-Exempt Note, and the Governmental Lender will comply with the requirements of the Code with respect to such allocation. The Governmental Lender has applied the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Tax-Exempt Note; and, in connection therewith, has included the information on Form 8038 filed for the Governmental Lender Tax-Exempt Note that is required by section 3.03 of said Notice.

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 BANK LOAN OR THE BORROWER LOAN, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

Section 2.02. Representations, Warranties and Covenants of the Bank. The Bank as of the date hereof, represents, warrants and covenants that:

(a) The Bank is a banking corporation, organized and existing under the laws of the State, is in good standing in the State, and has full legal right, power and authority under the laws of the United States and the State (i) to enter into the Bank Loan Documents to which it is a party, (ii) to perform its obligations hereunder, and (iii) to consummate the transactions on its part contemplated by the Bank Loan Documents to which it is a party.

(b) The Bank Loan Documents to which it is a party have been duly executed and delivered by the Bank and, when duly authorized, executed and delivered by the other

respective parties thereto, 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 the Bank Loan Documents to which it is a party, the performance by the Bank of its obligations thereunder and the consummation of the transactions on its part contemplated 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 Bank's loaning of the amounts set forth herein to the Governmental Lender or the Bank's execution and delivery of the Bank Loan Documents to which it is a party, (ii) affects or questions the validity or enforceability against the Bank of the Bank Loan Documents to which it is a party, 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, the Bank Loan Documents to which it is a party.

(e) Any certificate signed by a representative of the Bank and delivered pursuant to this Bank Loan Agreement or any of the other Bank Loan Documents to which it is a party shall be deemed a representation and warranty by the Bank as to the statements made therein.

### ARTICLE III

#### THE BANK LOAN

Section 3.01. Closing of the Bank Loan. The closing of the Bank Loan shall not occur until the following conditions are met:

(a) the Bank shall have received an original executed counterpart of this Bank Loan Agreement, the Governmental Lender Notes, the Assignment Agreement, the Regulatory Agreement, the Deed of Trust, the Borrower Assignments and the Subordination Agreement, and originals of the Borrower Notes, each endorsed by the Governmental Lender without recourse to the Bank together with evidence satisfactory to the Bank of the recordation of the Regulatory Agreement, the Subordination Agreement and the Deed of Trust in the official records of the County Recorder of the County, which may be by telephonic notice from the Title Company;

(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 Bank Loan Agreement shall have occurred;

(c) the conditions to the initial advance of the Bank Loan set forth in the Disbursement Agreement and the Continuing Covenant 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 Bank Loan Documents to which the Borrower is a party;

(e) the Bank shall have received an Opinion of Tax Counsel in a form reasonably acceptable to the Bank as to the tax-exempt nature of interest on the Governmental Lender Tax-Exempt Note and that the Governmental Lender has duly executed and delivered the Bank Loan Agreement and that such agreement and the Governmental Lender Notes are valid and binding limited obligations of the Governmental Lender, subject to customary exceptions;

(f) the Bank shall have received an Opinion of Tax Counsel to the effect that the Governmental Lender Notes are exempt from registration under the Securities Act of 1933, and this Bank Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(g) the receipt by the Governmental Lender and the Fiscal Agent of an investor letter, one for each of the Governmental Lender Notes, each executed by the Bank and in the form set forth in Exhibit B to this Bank Loan Agreement;

(h) the Bank shall have received the original Governmental Lender Notes, executed by the Governmental Lender;

(i) the Bank shall have received a certified copy of the resolution of the Governmental Lender authorizing the issuance of the Governmental Lender Notes; and

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

Section 3.02. Commitment to Execute the Governmental Lender Notes. The Governmental Lender agrees to execute and deliver the Governmental Lender Notes simultaneously with the execution of this Bank Loan Agreement, the Borrower Loan Agreement, the Borrower Notes and the Regulatory Agreement.

Section 3.03. Amount and Use of Bank 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 Bank Loan in an aggregate principal amount of up to \$36,000,000, and agrees to have the proceeds of the Bank Loan applied and disbursed in accordance with the provisions of this Bank Loan Agreement.

Section 3.04. Disbursement of Bank Loan Proceeds.

(a) The Bank Loan is to be funded on a draw-down basis. Subject to the terms and conditions of the Borrower Loan Agreement, the Disbursement Agreement and the Continuing Covenant Agreement, the Bank agrees to advance, on behalf of the Governmental Lender, to the Title Company, for the benefit of the Borrower, the amount of the Initial Disbursement for disbursement in accordance with the instructions of the Bank, which amount shall be deemed to have been simultaneously advanced for the account of the Governmental Lender under this Bank Loan Agreement as an advance on the Bank Loan. Subsequent draws of proceeds of the Bank Loan shall be advanced by the Bank directly to the Borrower for the account of the Governmental Lender as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Disbursement Agreement. All payments of interest on the Governmental Lender Note shall be funded with internal transfers by the Bank from the interest reserve accounts maintained at the Bank to the Bank as owner of the Governmental Lender Notes. Such transfers shall constitute advances under the Bank Loan and the Borrower Loan. Upon each advance of principal under the Borrower Loan Agreement and the Disbursement Agreement, a like amount of the Bank Loan shall be deemed concurrently and simultaneously advanced under this Bank Loan Agreement, including the Initial Disbursement. Borrower Loan advances and Bank Loan advances shall be allocated to the Borrower Tax-Exempt Note and the related Governmental Lender Tax-Exempt Note and, once the foregoing Notes have been fully funded, then to the Borrower Taxable Note and the related Governmental Lender Taxable Note. Notwithstanding anything in this Bank Loan Agreement to the contrary, no amount of the Bank Loan may be drawn down and funded hereunder after the date which is three years after the Closing Date.

(b) The Bank Loan shall be originated on the Closing Date and each Governmental Lender Note shall mature on the Maturity Date specified in the respective Governmental Lender Note at which time the entire outstanding principal amount of such Governmental Lender Note, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(c) The outstanding principal amount of each Governmental Lender Note and of the Bank Loan as of any given date shall be the total amount advanced by the Bank to or for the account of the Governmental Lender to fund corresponding advances with respect to the related Borrower Note under the Borrower Loan Agreement and the Disbursement Agreement as proceeds of the Borrower Loan, less any payments of principal of such Governmental Lender Note previously received upon payment of corresponding principal amounts under the related Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments.

The principal amount of each Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (c) and in paragraphs (d) and (e) of this Section 3.04.

The Bank promptly shall advise the Fiscal Agent in writing, and the Fiscal Agent shall keep a record of, all principal advances and principal repayments made under the Governmental Lender Notes. The Bank shall upon written request provide the Fiscal Agent with monthly statements of such information, including the outstanding principal balance of the Governmental Lender Notes and the Bank Loan and such other information as may be reasonably requested by Fiscal Agent from time to time to permit Fiscal Agent to carry out its recordkeeping responsibilities.

(d) Interest shall be paid on the outstanding principal amount of each Governmental Lender Note at the rate or rates set forth in the related Borrower Note.

(e) The payment or prepayment of principal, interest and Prepayment Premium, if any, due on the Bank Loan and each Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the corresponding Borrower Note. The Governmental Lender Tax-Exempt Note shall be payable from payments on the corresponding Borrower Tax-Exempt Note and the Governmental Lender Taxable Note shall be payable from payments on the corresponding Borrower Taxable Note. Any payment or prepayment made by the Borrower of principal, interest, Prepayment Premium, if any, due on a Borrower Note shall be deemed to be like payments or prepayments of principal, interest and Prepayment Premium, if any, due on the Bank Loan and the corresponding Governmental Lender Note.

## ARTICLE IV

### LIMITED LIABILITY; NOTE REGISTER

Section 4.01. Limited Liability. All obligations and any liability of the Governmental Lender under any of the Bank Loan Documents are limited obligations of the Governmental Lender, payable solely from the Security. 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 Governmental Lender Notes or for the performance of any pledge, obligation or agreement of any kind whatsoever of the Governmental Lender under the Bank Loan Documents except as set forth herein, and none of the Governmental Lender Notes or any of the Governmental Lender's agreements or obligations under the Bank Loan Documents 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. None of the faith, revenues, credit or taxing power of the Governmental Lender, the State or any other political corporation or subdivision or agency thereof shall be pledged to the payment of the principal of, premium (if any), or interest on the Governmental Lender Notes or otherwise to secure the obligations of the Governmental Lender under the Bank Loan Documents.

No recourse under or upon any obligation, covenant, warranty or agreement contained in the Bank Loan Documents, or under any judgment obtained against the Governmental Lender, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of the Bank Loan Documents, shall be had against the Governmental Lender or any of the officials, Councilmembers, officers, agents or employees of the Governmental Lender (past, present or future), either directly or through the Governmental Lender or otherwise, for the payment for or to the Governmental Lender or any receiver of the Governmental Lender, or for or to the owner of the Governmental Lender Notes, or otherwise, of any sum that may be due and unpaid by the Governmental Lender under any of the Bank Loan Documents. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of the Governmental Lender or of any such Councilmember, officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owner of the Governmental Lender Notes or otherwise of any sum that may remain due and unpaid under the Bank Loan Documents or any of them is, by the acceptance of the Governmental Lender Notes, expressly waived and released as a condition of and in consideration for the execution of this Bank Loan Agreement and the issuance of the Governmental Lender Notes. Anything in this Bank Loan Agreement to the contrary notwithstanding, it is expressly understood by the parties to this Bank Loan Agreement that (a) the Governmental Lender may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Borrower or the owner of the Governmental Lender Notes as to the existence of any fact or state of affairs, (b) the Governmental Lender shall not be under any obligation under this Bank Loan Agreement to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent and (c) none of the provisions of the Bank Loan Documents shall require the Governmental Lender to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bank Loan Documents, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Governmental Lender Notes or for the satisfaction of any liability arising from, founded upon or existing by reason of the issuance, purchase or ownership of the Governmental Lender Notes or otherwise under the Bank Loan Documents shall be had against the Governmental Lender or any official, officer, Councilmember, agent or employee of the Governmental Lender, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Bank Loan Agreement and the issuance of the Governmental Lender Notes. No covenant, stipulation, obligation or agreement of the Governmental Lender contained in the Bank Loan Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future Councilmember, officer, agent or employee of the Governmental Lender in other than that person's official capacity. No Councilmember, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of the principal, or redemption price of, Prepayment Premium, if any or interest on the Governmental Lender Notes or be subject to any personal liability or accountability by reason of the issuance of the

Governmental Lender Notes. No covenant, condition or agreement contained herein or in any of the other Bank Loan Documents shall be deemed to be a covenant, agreement or obligation of any present or future officer, Councilmember, employee or agent of the Governmental Lender in his individual capacity, and neither the officers, Councilmembers, employees or agents of the Governmental Lender executing the Governmental Lender Notes or any of the Bank Loan Documents shall be liable personally on the Governmental Lender Notes or under any of the Bank Loan Documents or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Notes or the execution of any of the Bank Loan Documents.

It is recognized that, notwithstanding any other provision of the Bank Loan Documents, none of the Borrower, the Fiscal Agent or any owner of the Governmental Lender Notes shall look to the Governmental Lender for damages suffered by the Borrower, the Fiscal Agent or such owner as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under the Bank Loan Documents or any other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, or for any other reason. Although this Bank Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Bank Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

THE GOVERNMENTAL LENDER NOTES AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE SOLELY FROM THE SECURITY AND ANY OTHER REVENUES, FUNDS AND ASSETS PLEDGED UNDER THIS BANK LOAN AGREEMENT AND NOT FROM ANY OTHER REVENUES, FUNDS OR ASSETS OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE GOVERNMENTAL LENDER NOTES ANY PREPAYMENT PREMIUM OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY SPECIFICALLY PLEDGED THEREFOR UNDER THIS BANK LOAN AGREEMENT. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR OF THE GOVERNMENTAL LENDER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREPAYMENT PREMIUM, IF ANY, OR INTEREST ON THE GOVERNMENTAL LENDER NOTES OR OTHER COSTS INCIDENT THERETO.

Section 4.02. Note Register. The Fiscal Agent shall maintain records (the "Note Register") as to the payee of the Governmental Lender Notes. Any transfer by the Bank (or by any subsequent transferee) of the Governmental Lender Notes shall be recorded by the Fiscal Agent in the Note Register.

The Fiscal Agent acknowledges that the Bank is the initial registered owner of the Governmental Lender Notes and shall remain the sole registered owner of the Governmental Lender Notes except as provided herein. The Fiscal Agent shall provide written notice to the Governmental Lender of any transfer by the Bank of a Governmental Lender Note or any interest of the Bank in a Governmental Lender Note of which it is aware or of which it has written notice.

Section 4.03. Transfer of Governmental Lender Notes.

(a) Each Governmental Lender Note may, in accordance with the terms of this Bank Loan Agreement, but in any event subject to the provisions of Section 4.03(b) and (c) hereof, be transferred upon the Note Register required to be kept pursuant to the provisions of Section 4.02 by the person in whose name such Governmental Lender Note is registered, in person or by his duly authorized attorney, upon surrender of the respective Governmental Lender Note for cancellation at the office of the Fiscal Agent, accompanied by a written instrument of transfer in the form attached to the respective Governmental Lender Note, duly executed. Whenever such Governmental Lender Note shall be surrendered for transfer, the Governmental Lender shall execute and the Fiscal Agent shall authenticate and deliver to the transferee, a new Governmental Lender Note in the name of the transferee as beneficiary thereof.

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

Nothing contained in this Section 4.03(b) shall be deemed to limit or otherwise restrict the sale by any owner of the Governmental Lender Notes of any participation interests in the Governmental Lender Notes; provided that (i) such owner shall remain the owner of record of the respective Governmental Lender Note following the sale of any such participation interest; (ii) all purchasers of any participation interest are Approved Institutional Buyers; (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 respective Governmental Lender Note; and (iv) the purchaser of such participation interest shall provide an investor letter to the Governmental Lender and the Fiscal Agent substantially in the form of Exhibit B hereto.

(c) The Governmental Lender Notes may only be transferred together, in whole.

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

(e) The transferor of the Governmental Lender Notes shall indemnify and defend the Governmental Lender and the officers, Councilmembers, employees, attorneys and agents of the Governmental Lender, past, present and future, against any claim brought by any transferor or transferee of the Governmental Lender Notes in respect of the Bank Loan Documents in the event that there occurs a transfer of the Governmental Lender Notes that is not permitted pursuant to this Section 4.03. Failure to comply with Section 4.03(b) shall cause any purported transfer to be null and void.

## ARTICLE V

### REPAYMENT OF THE BANK LOAN

#### Section 5.01. Bank Loan Repayment.

(a) The Bank Loan shall be evidenced by the Governmental Lender Notes which shall each be a physically certificated instrument executed by the Governmental Lender in the form attached hereto as Exhibit A, authenticated by the Fiscal Agent. The Fiscal Agent is hereby authorized and directed to authenticate the Governmental Lender Notes in final form. As evidence of its obligation to repay the Bank Loan, simultaneously with the delivery of this Bank Loan Agreement, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Notes. The Governmental Lender Notes may not be registered in the name of, or thereafter be transferred to, any person except as set forth in Section 4.03(b) hereof. The Governmental Lender agrees to pay to the Bank, but only from amounts received by the Governmental Lender (or by the Bank, in its capacity as agent for the Governmental Lender under the Assignment Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Notes, the Borrower Assignments and the Deed of Trust; principal of, any Prepayment Premium and interest on the Bank Loan at the times, in the manner, in the amount and at the rates of interest provided in the Governmental Lender Notes and this Bank 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 Bank and appointment of the Bank as agent for the Governmental Lender under the Assignment Agreement, all late charges and Prepayment Premium as set forth in the Governmental Lender Notes, all taxes and assessments, general or special, including, without limitation, all ad valorem taxes and any other governmental charges and impositions whatsoever concerning or in any way related to the Project, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project; 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 Project and the Governmental Lender's obligations hereunder will be limited as provided in Sections 4.01, 5.02 and 6.14 hereof.

(c) The Governmental Lender further agrees, subject to Sections 4.01, 5.02 and 6.14 hereof, to cause the Borrower to pay to the Bank, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank and appointment of the Bank as agent for the

Governmental Lender under the Assignment Agreement, on the Closing Date a loan fee equal to \$[\_\_\_\_\_].

Section 5.02. Nature of the Governmental Lender's Obligations. The Governmental Lender shall repay the Bank Loan, but only from amounts received by the Governmental Lender or the Bank (in its capacity as assignee of the Governmental Lender under the Assignment Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Notes, the Borrower Assignments and the Deed of Trust, pursuant to the terms of the Governmental Lender Notes irrespective of any rights of set-off, recoupment or counterclaim the Governmental Lender might otherwise have against the Bank or any other person. The Governmental Lender will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Bank Loan Agreement for any cause, including, without limiting the generality of the foregoing: (i) any delay or interruption in the construction or operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Bank Loan or the Project; (iii) any event constituting Force Majeure (as defined in the Borrower Loan Agreement); (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the Governmental Lender or the Bank to perform or observe any covenant whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Governmental Lender Notes; it being the intention of the parties that, as long as the Governmental Lender Notes or any portion thereof remains outstanding and unpaid, the Governmental Lender shall be obliged to repay the Bank Loan, but only from amounts received by the Governmental Lender or the Bank (in its capacity as assignee of the Governmental Lender under the Assignment Agreement) from the Borrower pursuant to the Borrower Loan Agreement, the Borrower Notes, the Borrower Assignments and the Deed of Trust. This Section 5.02 shall not be construed to release the Governmental Lender from any of its obligations hereunder, or, except as provided in this Section 5.02, to prevent or restrict the Governmental Lender from asserting any rights which it may have against the Bank under the Governmental Lender Notes or under any provision of law or to prevent or restrict the Governmental Lender, from prosecuting or defending any action or proceeding by or against the Bank or the Borrower or taking any other action to protect or secure its rights, or to prevent or restrict the Bank from asserting any rights which it may have against the Borrower.

Notwithstanding the foregoing, neither any past, present or future Councilmembers, officers, attorneys, accountants, financial advisors, agents, employees or staff or the Councilmembers, officers, attorneys, accountants, financial advisors, agents, employees 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 Bank Loan Agreement or the Governmental Lender Notes; and the Bank's and Fiscal Agent's remedies in the event of a default under the Bank Loan shall be limited to those remedies set forth in Section 7.03 hereof and, if a default also exists under the Borrower Loan Agreement, the Borrower Notes or the Deed of Trust, to commence foreclosure under the Deed of Trust and the exercise of the power of sale or other rights granted thereunder and to exercise any rights it may have under the Borrower Assignments. In the event of a default

hereunder or under the Governmental Lender Notes, the Bank shall not have the right to proceed directly against the Governmental Lender or the right to obtain a deficiency judgment from the Governmental Lender after foreclosure.

## ARTICLE VI

### FURTHER AGREEMENTS

Section 6.01. 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.

Section 6.02. Additional Instruments. The Governmental Lender hereby covenants to execute and deliver, or cause to be executed and delivered, at the expense of the Borrower, such additional instruments and to perform such additional acts, or cause the performance of such additional acts, as may be necessary, in the written opinion of the Bank, acting reasonably, to carry out the intent of this Bank Loan Agreement and the Governmental Lender Notes or to perfect or give further assurances of any of the rights granted or provided for in the Bank Loan Documents.

Section 6.03. Books and Records. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank, and subject to the provisions of Sections 4.01, 5.02 and 6.14 hereof, cause the Borrower to permit the Bank or its duly authorized representatives access during normal business hours to the books and records of the Borrower pertaining to the Borrower Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, the Bank and their duly authorized representatives, and at the sole expense of the Borrower.

Section 6.04. Notice of Certain Events. The Governmental Lender hereby covenants to advise the Bank and the Fiscal Agent promptly in writing of the occurrence of any Event of Default under and as defined in the Borrower Loan Agreement or the Regulatory Agreement 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, in each case by transmitting to the Bank a copy of the notice of such Event of Default or event received by the Governmental Lender. In Section 6.6 of the Borrower Loan Agreement, the Borrower has agreed to advise the Governmental Lender, the Fiscal Agent and the Bank promptly in writing of the occurrence of any default under the Borrower Loan or of the occurrence of an Act of Bankruptcy.

Section 6.05. Consent to Assignment. The Governmental Lender has made an assignment to the Bank of all rights and interest of the Governmental Lender in and to the Borrower Loan Agreement (except the Governmental Lender's rights under Section 6.7 of the Borrower Loan Agreement and its retained rights under Sections 2.3, 2.4, 5.1(b), 5.1(d), 5.1(e), 7.4, 8.7, 8.12 and

8.13 of the Borrower Loan Agreement, together with its rights to receive notice and consent to amendments pursuant to the Loan Documents), the Borrower Assignments and the Deed of Trust and the Borrower Notes, upon the terms and as otherwise provided in the Assignment Agreement. The Bank hereby consents to all such assignments.

Section 6.06. Compliance with Usury Laws. Notwithstanding any other provision of this Bank Loan Agreement, it is agreed and understood that in no event shall this Bank Loan Agreement, with respect to the Governmental Lender Notes, be construed as requiring the Governmental Lender or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Bank 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 either of the Governmental Lender Notes or other evidence of indebtedness, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Bank Loan Agreement, the Governmental Lender Notes or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount then owing on the Governmental Lender Notes.

The provisions of this Section 6.06 prevail over any other provision of this Bank Loan Agreement.

Section 6.07. Title to the Project. The Borrower has agreed in Section 6.10 of the Borrower Loan Agreement that, concurrently with the closing of the Borrower Loan, it will have a leasehold interest in the site on which the Project is located free and clear of any lien or encumbrance except for (i) liens for nondelinquent assessments and taxes not yet due or which are being contested in good faith by appropriate proceedings, (ii) the Deed of Trust, the Regulatory Agreement and the Subordination Agreement, (iii) Permitted Encumbrances (as defined in the Disbursement Agreement), and (iv) any other encumbrances approved by the Bank. Concurrently with the closing of the Bank Loan, the Borrower is obligated under Section 6.10 of the Borrower Loan Agreement to deliver to the Bank one or more title policies, naming the Bank as the insured, as its interests may appear with endorsements specified in the Bank's escrow instructions, issued by a title company acceptable to the Bank. The Governmental Lender makes no representation as to the condition of title to the Project or as to the adequacy or enforceability of any title insurance referred to in the Borrower Loan Agreement or the Deed of Trust.

Section 6.08. Filing of Tax Returns. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank, and subject to the provisions of Sections 4.01, 5.02 and 6.14 hereof, cause the Borrower to file, or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Project and of which the Governmental Lender has knowledge.

Section 6.09. No Reliance on Governmental Lender. In entering into this Bank Loan Agreement and the other Bank Loan Documents to which it is a party, the Bank has not 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 this Bank Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Bank to secure repayment of the Governmental Lender Notes. The Governmental Lender has made no representations to any party relating to the Borrower, the Project, the Borrower Loan or the security or sources of payment therefor, except as expressly stated in this Bank Loan Agreement and the other Bank Loan Documents to which it is a party.

Section 6.10. No Untrue Statements. Neither this Bank Loan Agreement nor any other document, certificate or statement furnished to the Bank by the Governmental Lender pursuant to the Bank Loan Documents to which it is a party, contains to the best of its knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by the Governmental Lender that all such statements, representations and warranties shall be deemed to have been relied upon by the Bank as an inducement to make the Bank Loan and that if any such statements, representations and warranties were materially incorrect at the time they were made, the Bank may consider any such misrepresentation or breach an Event of Default.

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

Section 6.11. Insurance. The Governmental Lender shall, solely by the execution of the Borrower Loan Agreement and the assignment thereof to the Bank, and subject to the provisions of Sections 4.01, 5.02 and 6.14 hereof, cause the Borrower to provide policies of insurance with respect to the Project and the operation thereof issued by an insurer, and in forms and amounts, as required by the Continuing Covenant Agreement.

Section 6.12. Tax Covenants. The Governmental Lender covenants to and for the benefit of the Bank that, notwithstanding any other provisions of this Bank Loan Agreement or of any other instrument, it will:

- (a) Require the Borrower to execute the Regulatory Agreement as a condition of funding the Borrower Loan;
- (b) Not knowingly take or cause to be taken any other action or actions, or knowingly fail to take any action or actions, which would cause the interest payable on the

Governmental Lender Tax-Exempt Note to be includable in gross income for federal income tax purposes;

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

(d) Not knowingly take any 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, knowingly permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Tax-Exempt Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations;

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of the Governmental Lender Tax-Exempt Note, or any other moneys which may be deemed to be proceeds of the Governmental Lender Tax-Exempt Note, which would cause the Governmental Lender Tax-Exempt Note to be an "arbitrage bond" within the meaning of Section 148 the Code, and to comply with the requirements of the Code throughout the term of the Governmental Lender Tax-Exempt Note; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 6.12, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Bank Loan Agreement and made a part of this Bank Loan Agreement as if set forth in this Bank Loan Agreement in full. To the extent of any conflict between the requirements of this Bank Loan Agreement and the Tax Certificate, the requirements of the Tax Certificate shall control.

For purposes of this Section 6.12 the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's knowledge and control and no acts, omissions or directions of the Borrower, the Bank or any other Person shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

The covenants of the Governmental Lender in this Section 6.12 are made solely in reliance on the representations and covenants of the Borrower set forth in the Borrower Loan Agreement, the Tax Certificate and the Regulatory Agreement and a default by the Borrower with respect thereto shall not be considered a default of the Governmental Lender hereunder. The covenants of the Governmental Lender in this Section 6.12 are limited to those actions within its control, and further limited to the extent that the costs and expenses of taking such actions are borne by the Borrower or a third party.

Section 6.13. [Reserved].

Section 6.14. Immunities and Limitations of Responsibility of Governmental Lender. 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 communication 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) 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 rate of interest on the Borrower Loan, 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.

A default by the Borrower in any of its covenants, representations and agreements in the Borrower Loan Agreement or the Regulatory Agreement 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.

The Borrower has indemnified the Governmental Lender against certain acts and events as set forth in Section 6.7 of the Borrower Loan Agreement and Section 9 of the Regulatory Agreement. Such indemnities shall survive payment of the Bank Loan and discharge of this Bank Loan Agreement.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. Each of the following shall be an "Event of Default":

(a) The Governmental Lender shall fail to perform or observe any of its covenants or agreements contained in this Bank Loan Agreement or the Governmental Lender Notes, and such failure shall continue during and after the period specified in Section 7.02; or

(b) Any representation or warranty of the Governmental Lender hereunder shall be determined by the Bank to have been false in any material respect when made; or

(c) The Borrower shall fail to pay when due the amounts required to be paid under the Borrower Loan Agreement, the Deed of Trust, any Borrower Assignment or the Borrower Notes, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency receivership, liquidation or similar proceedings; or

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

Section 7.02. Notice of Default; Opportunity to Cure. No default under Section 7.01 hereof shall constitute an Event of Default until:

(a) The Governmental Lender, the Borrower and the Equity Investor by registered or certified mail, shall have been sent notice of such default specifying the nature of such default and stating that such notice is a "Notice of Default"; and

(b) The Governmental Lender, the Borrower and the Equity Investor shall have had 10 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, that if the default specified in the notice is of such a nature that it cannot be corrected within 10 days, such default shall not constitute an Event of Default hereunder so long as (i) the Governmental Lender, the Borrower or the Equity Investor institutes corrective action within said 10 days, and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of Tax Counsel, the failure to cure said default within 10 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Tax-Exempt Note.

The Equity Investor may, but shall not in any way be required to, correct a default on behalf of the Borrower under the Borrower Loan Agreement or the Borrower Notes and the Governmental Lender and the Bank agree to accept the tender of a valid cure of a default, timely made by the Equity Investor, on the same basis as if made by the Borrower.

Notwithstanding anything to the contrary contained in the Bank Loan Documents, if a monetary default or event of default occurs under the terms of any of the Bank Loan Documents, prior to exercising any remedies thereunder, the Bank shall give the Borrower and the Equity Investor and any administrative limited partner of the Borrower under the Borrower's partnership agreement simultaneous written notice of such default. The Borrower and the Equity Investor shall have a period of 10 days after receipt of such notice, or such longer period of time as may be set forth in the applicable Loan Documents, to cure the default prior to exercise of remedies by the Bank under the Bank Loan Documents.

Section 7.03. Remedies. Whenever any Event of Default under Section 7.01 hereof shall have happened and be continuing, the Bank may take whatever remedial steps as may be allowed under the law, this Bank Loan Agreement, the Deed of Trust and the Borrower Assignments.

Section 7.04. Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender or the Bank should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Governmental Lender contained herein, the Governmental Lender shall cause the Borrower (solely by its execution and assignment of the Borrower Loan Agreement) on demand to pay to the Governmental Lender or the Bank the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

Section 7.05. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bank Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 7.06. No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Bank Loan Agreement should be breached by the Governmental Lender or the Borrower and thereafter waived by the Bank, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

## ARTICLE VIII

### FUNDS AND ACCOUNTS

Section 8.01. Authorization to Create Funds and Accounts. In addition to the funds and accounts established by Section 8.03 hereof, at the request or with the consent of the Borrower, the Bank, the Fiscal Agent and any designee of the Bank are authorized to establish and create

from time to time such other funds and accounts or subaccounts as may be necessary or convenient for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Fiscal Agent or the Bank pursuant to the terms hereof or any of the other Bank Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Bank Loan Documents and/or the Borrower Loan Documents.

Section 8.02. Investment of Funds. Amounts held in any funds or accounts created under this Bank Loan Agreement shall be invested by the Fiscal Agent, the Bank or the designee of the Bank, in Permitted Investments at the written direction of the Borrower, subject in all cases to the restrictions of Section 6.12 hereof and of the Tax Certificate. The Borrower's instruction shall be sufficient evidence that the investment constitutes a Permitted Investment. In the absence of any such instruction, monies shall be held uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in such fund or account. For purposes of acquiring any investments hereunder, the Fiscal Agent may commingle funds held by it hereunder, except as provided in Section 8.08(h) hereof with respect to the Rebate Fund. Neither the Fiscal Agent nor the Bank shall incur any liability for losses arising from any investments made pursuant to this Section.

The Fiscal Agent shall furnish the Borrower, the Governmental Lender (upon its written request), and Bank periodic cash transaction statements that include detail for all investment transactions effected by the Fiscal Agent or brokers selected by the Borrower. Upon the Borrower's, the Governmental Lender's or Bank's election, such statements will be delivered via the Fiscal Agent's online service, and upon electing such service, paper statements will be provided only upon request. The Borrower waives the right to receive brokerage confirmations of security transactions effected by the Fiscal Agent as they occur, to the extent permitted by law. The Borrower further understands that trade confirmations for securities transactions effected by the Fiscal Agent will be available upon request and at no additional cost, and other trade confirmations may be obtained from the applicable broker.

Section 8.03. Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Bank Loan Payment Fund;
- (b) The Project Fund (consisting solely of a Note Proceeds Account (with a Tax-Exempt Subaccount and a Taxable Subaccount therein) and an Equity Account;
- (c) The Expense Fund;
- (d) The Closing Costs Fund; and

(e) The Rebate Fund (to be established by the Fiscal Agent once the Fiscal Agent is required to deposit or transfer, as applicable, amounts to the Rebate Fund in accordance with Section 8.08(a)).

Notwithstanding the foregoing, the Fiscal Agent shall not be required to open the Closing Costs Fund or the Equity Account of the Project Fund unless and until a first deposit is required to be made therein. So long as the Bank is making disbursements of the Bank Loan directly to the Borrower and the Project Fund has a zero balance, the Fiscal Agent shall not be required to maintain the Project Fund, but may close and later (with the consent of the Bank or the Borrower) reopen such fund (and the accounts therein) if necessary or convenient to the administration of the Bank Loan and this Bank Loan Agreement.

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 Bank Loan Agreement shall be held by the Fiscal Agent for the benefit of the Bank, and except for money held in the Expense Fund or the Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Security and be subject to the lien hereof.

Section 8.04. Bank Loan Payment Fund. The Governmental Lender and the Borrower shall have no interest in the Bank Loan Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

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

The Fiscal Agent shall apply all amounts on deposit in the Bank Loan Payment Fund in the following order of priority:

(a) First, to pay or provide for the payment of the interest then due on the Bank Loan to the Bank or any transferee of the Bank with respect to the Governmental Lender Notes;

(b) Second, to pay or provide for the payment or the prepayment (together with any Prepayment Premium payable in connection with such prepayment) of principal on the Bank Loan to the Bank or any transferee of the Bank with respect to the Governmental Lender Notes, provided moneys have been transferred or deposited into the Bank Loan Payment Fund for such purpose; and

(c) Third, to pay or provide for the payment of the Bank Loan on the Maturity Date to the Bank or any transferee of the Bank with respect to the Governmental Lender Notes.

Section 8.05. Expense Fund. The Fiscal Agent shall deposit into the Expense Fund the amounts required by the Regulatory Agreement (if and to the extent not invoiced directly to the Borrower) or the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent on behalf of the Borrower. 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 Ongoing Governmental Lender Fee to the Governmental Lender as and when due (if and to the extent not invoiced directly to the Borrower) pursuant to Section 7(a) of the Regulatory Agreement, (ii) the Fiscal Agent's Fees to the Fiscal Agent when due, (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.

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

Written notice of any insufficiency, which would result in the Governmental Lender not receiving the Ongoing Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Bank) within 10 days of the respective due date.

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

Notwithstanding anything herein to the contrary, unless otherwise directed in writing by the Governmental Lender, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Ongoing Governmental Lender Fee not later than 30 days prior to the due date for payment of such the Ongoing Governmental Lender Fee, and shall remit moneys received by the Borrower to the Governmental Lender for payment of such fee.

Section 8.06. Closing Costs Fund. 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: moneys on deposit in the Closing Costs Fund shall be applied to pay Closing Costs at the written direction of a Borrower Representative, consented to by the Bank, in the form attached hereto as Exhibit D. Any interest earnings on amounts on deposit in the Closing Costs Fund shall

remain in the 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 not more than 180 days after the Closing Date, shall be paid to or at the direction of the Borrower and the Closing Costs Fund shall be closed.

Section 8.07. Project Fund.

(a) Any amounts delivered from time to time to the Fiscal Agent by or on behalf of the Borrower (excluding any proceeds of the Bank Loan) shall be deposited to the Equity Account of the Project Fund. Whether disbursed by the Fiscal Agent or by the Bank directly to the Borrower, proceeds of the Bank Loan shall be deemed to have been disbursed from the Note Proceeds Account of the Project Fund solely for the acquisition, rehabilitation and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Not less than 97% of the moneys deposited in and/or credited or deemed credited to the Tax-Exempt Subaccount of the Note Proceeds Account of the Project Fund, and taking into account proceeds of the Bank Loan (if any) deposited in and/or credited to or deemed credited to the Closing Costs Fund, representing the proceeds of the Governmental Lender Tax-Exempt Note, including Investment Income thereon, will be expended for Qualified Project Costs (the "97% Requirement"). No more than 2% of the amounts deposited in and/or credited or deemed credited to the Tax-Exempt Subaccount of the Note Proceeds Account of the Project Fund shall be applied to the payment of Costs of Issuance (as defined in the Regulatory Agreement).

Before any payment shall be made (or deemed made) from the Note Proceeds Account of the Project Fund, the Regulatory Agreement shall have been executed and submitted to the Title Company together with instructions for recordation in the official records of the County, and the Title Company shall have accepted and agreed to such instructions.

(b) Notwithstanding anything to the contrary herein, following the Initial Disbursement on the Closing Date, all disbursements of the Bank Loan shall be transferred by Bank directly to Borrower in accordance with the Disbursement Agreement and upon receipt of a properly completed Request for Advance in substantially the form set forth as Exhibit E to the Disbursement Agreement (a "Request for Advance"), a copy of which shall be provided to the Fiscal Agent and the Governmental Lender and in the case of disbursements to pay accrued interest on the Borrower Note, as provided in Section 3.04(a) hereof. If, at any later time, the Bank, the Fiscal Agent and Borrower shall determine that it is necessary or desirable that disbursements of the Bank Loan shall instead be transferred from the Bank to the Fiscal Agent for subsequent disbursement to the Borrower, the Bank and the Borrower shall provide a written request to the Fiscal Agent to such effect, the Fiscal Agent shall provide its written confirmation of acceptance thereof, and the following procedures shall apply. Before any payment shall be made by the Fiscal Agent from the Note Proceeds Account of the Project Fund, there shall first be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit

C and consented to by the Bank pursuant to the terms, conditions and provisions of the Disbursement Agreement, with a copy to the Governmental Lender.

Upon receipt of each Written Requisition submitted by the Borrower and approved in writing by the Bank, the Fiscal Agent shall promptly, but in any case within two Business Days, make payment from the appropriate account within the Project Fund in accordance with such Written 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 Bank Loan Documents, constitutes payment of Qualified Project Costs or complies with the 97% Requirement. The approval in writing of a Written Requisition or Request for Advance, as applicable, by the Bank shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Bank Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition or Request for Advance from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs. Such documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Bank and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Written Requisition, Request for Advance 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 and equipping of the Project.

Notwithstanding anything to the contrary contained herein, only the signature of an authorized officer of the Bank shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (notice of which default has been given in writing by an authorized officer of the Bank to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default). Furthermore, the Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Written Requisition signed only by the Bank (and without any need for any signature by an Authorized Borrower Representative) so long as the amount to be disbursed is to be used solely to make payments of principal, interest and/or fees due under the Bank Loan Documents.

The Fiscal Agent shall immediately provide Written Notice to the Borrower, the Bank and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the payments as and when required by this Section 8.07(b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer in accordance with the payment instructions set forth in the Written Requisition. The Fiscal Agent shall conclusively rely on the payment instructions provided in any Written Requisition or invoices provided in connection therewith, and the Fiscal Agent shall have no duty to authenticate or investigate such payment instructions or the authority under which they were given. 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 Bank Loan Documents, with the Written Consent of the Bank, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Bank Loan.

(c) Immediately prior to any mandatory prepayment of the Bank Loan pursuant to hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Bank, be transferred to the Bank Loan Payment Fund to be applied to the prepayment of the Bank Loan pursuant hereto as specified by the Bank.

(d) Amounts on deposit in the Project Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment income earned on amounts on deposit in each account of the Project Fund shall be retained in and credited to and become a part of the amounts on deposit in that account or subaccount of the Project Fund.

Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

Section 8.08. Rebate Fund.

(a) 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.

(b) 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.

(c) 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).

(d) 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 Governmental Lender Tax-Exempt Note.

(e) 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 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.

(f) If at any time during the term of this Bank Loan Agreement the Governmental Lender, the Fiscal Agent or the Borrower desires to take any action that 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, a Tax Counsel No Adverse Effect Opinion and an opinion of Tax Counsel that such action shall be in compliance with the laws of the State and the terms of this Bank Loan Agreement.

(g) 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 Bank to secure the repayment of the Governmental Lender Notes or any other obligations.

(h) 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, in Permitted Investments, subject to the Code. The Fiscal Agent shall sell and reduce to cash a sufficient amount of such Permitted Investments, as directed in writing by the Borrower, whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(i) Notwithstanding anything to the contrary in this Bank 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 Governmental Lender Tax-Exempt Note. In such event the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Fiscal Agent with respect to such withdrawal.

(j) 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 this Bank 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 Governmental Lender Note is no longer Outstanding in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

## ARTICLE IX

### THE FISCAL AGENT

Section 9.01. Appointment of Fiscal Agent; Acceptance. The Governmental Lender hereby appoints Fiscal Agent as fiscal agent hereunder. The Fiscal Agent shall signify its acceptance of

the duties and obligations imposed upon it by this Bank Loan Agreement by executing this Bank Loan Agreement.

Section 9.02. 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 Bank Loan Agreement, and no implied covenants or obligations shall be read into this Bank 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 Bank Loan Agreement, and exercise any rights or duties or remedies solely at the written direction of the Bank.

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

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

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

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

(iv) No provision of this Bank 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.

(v) The Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(d) Whether or not therein expressly so provided, every provision of this Bank Loan Agreement and the other Bank 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.

(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 Bank 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 Bank Loan Agreement.

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

(g) The rights of the Fiscal Agent and limitations of liability enumerated herein shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Bank Loan Documents.

Section 9.03. Notice of Defaults. Upon the occurrence of any default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent has actual knowledge or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor and the Bank, in the manner and at the addresses for notices set forth in Section 10.02 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 9.04(g) hereof, unless such default shall have been cured or waived.

Section 9.04. Certain Rights of Fiscal Agent. Except as otherwise provided in Section 9.01 hereof:

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

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

(c) Whenever in the administration of this Bank Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a written certificate of the Governmental Lender, the Bank 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 Bank Loan Agreement or any Borrower Loan Document at the

request or direction of the Bank, pursuant to this Bank Loan Agreement, unless the Bank 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, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Article VIII hereof;

(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 Bank or the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

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

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or Ongoing Governmental Lender Fee when due, unless a responsible officer of the Fiscal Agent shall be specifically notified by a written direction of such default by the Governmental Lender or the Bank, and all notices or other instruments required by this Bank 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 a responsible officer of the Fiscal Agent at the address of the Fiscal Agent in Section 10.02, and in the absence of such written notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

Section 9.05. Not Responsible for Recitals. The recitals contained herein and in the Governmental Lender Notes shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the 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 Bank Loan Agreement or of the Bank Loan.

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

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

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.

Section 9.06. [intentionally omitted]

Section 9.07. Moneys Held Hereunder. Moneys held by the Fiscal Agent 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.

Section 9.08. Compensation and Reimbursement. Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Bank 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 Bank Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service hereunder 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 in connection with such proceedings.

The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered under any of the Bank Loan Documents.

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

Section 9.09. Fiscal Agent Required; Eligibility. Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and Bank and (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 and 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 and 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 Bank in its sole and absolute discretion.

Section 9.10. Resignation and Removal; Appointment of Successor.

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

(b) The Fiscal Agent may resign at any time by giving 60 days' written notice thereof to the Governmental Lender, the Borrower and the Bank. 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, (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), with the written consent of the Bank and the Governmental Lender, or (iii) the Bank 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, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Bank, which consent shall not be unreasonably withheld. In case all or substantially all of the 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. 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 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 Bank

and the Governmental Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

Section 9.11. Acceptance of Appointment by Successor.

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender, the Bank 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 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 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 and powers.

(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.

Section 9.12. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause written notice of such succession to be delivered to the Bank and the Governmental Lender within 30 days of such succession.

Section 9.13. Appointment of Co-Fiscal Agent. It is recognized that in case of litigation under this Bank 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, 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 Bank and the Borrower, and with the consent of the Governmental Lender and the Bank, 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 Bank 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 him or it such properties, rights, powers, 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 become incapable of acting, resign or be removed, all the estates, properties, rights, powers, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co fiscal agent.

Section 9.14. 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 Bank Loan Agreement or any other Bank 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 Bank Loan Agreement and the other Bank Loan Documents are solely corporate in nature.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Entire Agreement. This Bank Loan Agreement, the Governmental Lender Notes, the Assignment Agreement and the other Bank Loan Documents to which the Governmental Lender is a party constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and the Bank with respect to the subject matter hereof.

Section 10.02. Notices. All notices, demands, requests and other communications required or permitted to be given by any provision of this Bank Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Governmental Lender: City of San José, California  
Finance Department  
200 East Santa Clara Street, 13th Floor Tower  
San José, California 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, California  
Department of Housing  
200 East Santa Clara Street, 12th Floor Tower  
San José, California 95113-1905  
Attention: Director of Housing  
Facsimile: (408) 998-3183

and a copy to  
(which shall not constitute notice  
to the Governmental Lender): City of San José, California  
200 East Santa Clara Street, 16th Floor Tower  
San José, California 95113  
Attention: Housing Attorney  
Facsimile: (408) 998-3131

If to Borrower: San Jose W. San Carlos LP  
5251 Ericson Way  
Arcata, California 96001  
Attention: Daniel Johnson

with a copy to: Odu & Associates, PC  
31805 Temecula Parkway #720  
Temecula, California 92592  
Attention: Nkechi Odu

and a copy to: the Equity Investor

If to the Fiscal Agent: U.S. Bank National Association  
Global Corporate Trust  
One California Street, Suite 1000  
San Francisco, California 94111  
Attention: Andrew Fung

If to the Equity Investor: Raymond James California Opportunities  
Fund XI L.L.C.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf

with a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, California 90071  
Attention: Rachel Rosner, Esq.

If to the Bank: Pacific Western Bank  
275 N. Brea Blvd.  
Brea, CA 92821  
Attention: Jennifer D. Riddle  
Email: jriddle@pacificwesternbank.com

with a copy to: Pacific Western Bank  
818 West 7th Street, Suite #450  
Santa Clara, CA 90017  
Attention: Holly A. Hayes  
Telephone: (213) 330-2073  
Email: hhayes@pacificwesternbank.com

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

Any party to this Bank Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Bank Loan Agreement by providing written notice of such change of address to all of the parties listed in this Section 23 by written notice as provided herein. A copy of each notice sent to the Borrower hereunder shall be provided to the Equity Investor; provided, however, that failure to send such copy or any defect therein shall not constitute a default hereunder.

Section 10.03. Assignments. Neither this Bank Loan Agreement nor the Borrower Loan Agreement may be assigned by any party hereto or thereto without the prior written consent of the other, which consent shall not be unreasonably withheld, except that the Governmental Lender

shall assign to the Bank certain of its rights under the Borrower Loan Agreement as provided in the Assignment Agreement.

Section 10.04. Severability. If any provision of this Bank Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Notes or in this Bank Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Bank only to the full extent permitted by law.

Section 10.05. Execution of Counterparts. This Bank 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.

Section 10.06. Amendments, Changes and Modifications. Except as otherwise provided in this Bank Loan Agreement, this Bank Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto.

No amendment to this Bank Loan Agreement or any other Bank Loan Document entered into under this Section 10.06 or any amendment, change or modification otherwise permitted under this Section 10.06 shall become effective unless and until (i) the Bank shall have approved the same in writing in its sole discretion, and (ii) the Bank shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Bank Loan Agreement.

Section 10.07. Governing Law. This Bank Loan Agreement and the Governmental Lender Notes are contracts made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State. This Bank Loan Agreement and the Governmental Lender Notes shall be enforceable in the State, and any action arising out of this Bank Loan Agreement or the Governmental Lender Notes shall be filed and maintained in the County unless the Governmental Lender waives this requirement.

Section 10.08. Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE BORROWER AND THE BANK (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BANK LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH SUCH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

IF FOR ANY REASON THIS WAIVER IS DETERMINED TO BE UNENFORCEABLE, ALL DISPUTES WILL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROCEDURES SET FORTH IN THE DEED OF TRUST.

Section 10.09. Term of Agreement. This Bank Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Bank Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Notes, this Bank Loan Agreement shall be terminated, without further action by the parties hereto. Time is of the essence in this Bank Loan Agreement.

Section 10.10. Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Bank Loan.

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

CITY OF SAN JOSE, CALIFORNIA,  
as Governmental Lender

By: \_\_\_\_\_  
Julia H. Cooper  
Director of Finance

Approved as to Legal Form:

By: \_\_\_\_\_  
Hana Hardy,  
Senior Deputy City Attorney

19021.20:J17884

[Signature Page of Governmental Lender to Bank Loan Agreement for Mariposa Place]

PACIFIC WESTERN BANK, a California  
state-chartered bank

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

Jennifer D. Riddle  
Senior Vice President

19021.20:J17884

[Signature Page of Pacific Western Bank to Bank Loan Agreement for Mariposa Place]

U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent

By: \_\_\_\_\_  
Andrew Fung,  
Vice President

19021.20:J17884

[Signature Page of Fiscal Agent to Bank Loan Agreement for Mariposa Place]

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTES**

THIS GOVERNMENTAL LENDER NOTE MAY BE OWNED ONLY BY AN APPROVED INSTITUTIONAL BUYER IN ACCORDANCE WITH THE TERMS OF THE BANK LOAN AGREEMENT REFERRED TO IN THIS GOVERNMENTAL LENDER NOTE, AND THE OWNER HEREOF, BY THE ACCEPTANCE OF THIS GOVERNMENTAL LENDER NOTE (A) REPRESENTS THAT IT IS AN APPROVED INSTITUTIONAL BUYER AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE OR ANY INTEREST HEREIN TO ANOTHER APPROVED INSTITUTIONAL BUYER IN ACCORDANCE WITH THE TERMS OF THE BANK LOAN AGREEMENT.

City of San José, California  
Multifamily Housing Revenue Note  
(Mariposa Place),  
Series 2021E-1 (Tax-Exempt) [E]-2 (Taxable)]

Dated January \_\_, 2022 \$[[\_\_\_\_\_]][[\_\_\_\_\_] ]

FOR VALUE RECEIVED, the undersigned CITY OF SAN JOSE, CALIFORNIA (the "Obligor") promises to pay to the order of PACIFIC WESTERN BANK (the "Owner") the principal sum of [\_\_\_\_\_] [\_\_\_\_\_] DOLLARS (\$[[\_\_\_\_\_]][[\_\_\_\_\_] ]), on [\_\_\_\_\_] [\_\_\_\_\_] (the "Maturity Date"), or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

The Obligor shall pay to the Owner on or before each date on which payment is due under that certain Loan Agreement, dated as of January 1, 2022 (the "Bank Loan Agreement"), among the Obligor, U.S. Bank National Association, as Fiscal Agent, and the Owner, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of this Governmental Lender Note, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on this Governmental Lender Note in accordance with the Bank Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. Capitalized terms used and not otherwise defined in this Governmental Lender Note have the respective meanings assigned in the Bank Loan Agreement.

The Obligor shall pay to the Owner on or before each date on which interest on the Bank Loan is payable interest on the unpaid principal balance hereof in an amount in immediately available funds sufficient to pay the interest on this Governmental Lender Note then due and payable in the amounts and at the rate or rates set forth in the related Borrower Note.

This Governmental Lender Note is a pass-through obligation relating to a construction and permanent loan (the "Borrower Loan") made by the Obligor from proceeds of the Bank Loan to San Jose W. San Carlos LP, a California limited partnership, as borrower (the "Borrower"), under that certain Loan Agreement, dated as of January 1, 2022 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower [Tax-Exempt][Taxable] Note. Reference is made to the Borrower Loan Agreement and to the Borrower [Tax-Exempt][Taxable] Note for complete payment and prepayment terms of the Borrower [Tax-Exempt][Taxable] Note, payments on which are passed-through under this Governmental Lender Note. In conjunction with, and on a parity with, the execution and delivery of this Governmental Lender Note, the Obligor is also executing and delivering its Multifamily Housing Revenue Note (Mariposa Place), Series [ ]-[1 (Tax-Exempt)][-2 (Taxable)] to fund the remaining portion of the Borrower Loan relating to the Project.

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

THIS GOVERNMENTAL LENDER 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 BANK LOAN AGREEMENT.

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

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

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

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

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

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

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Owner 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 of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of the Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Owner to any action of the Obligor which is subject to consent or approval of the Owner hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the City of San José, California has caused this Governmental Lender Note to be executed in its name and on its behalf all as of the date first written above.

CITY OF SAN JOSE, CALIFORNIA,  
as Governmental Lender

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

Julia H. Cooper,  
Director of Finance

[Signature Page of Governmental Lender to Governmental Lender Note – Mariposa Place]

CERTIFICATE OF AUTHENTICATION

This Governmental Lender Note is the Governmental Lender Note [Tax-Exempt] [Taxable] described in the within mentioned Bank Loan Agreement.

Date of Authentication: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Fiscal Agent

By: \_\_\_\_\_  
Authorized Officer

[Signature Page of Fiscal Agent to Governmental Lender Note – Mariposa Place]

## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

The undersigned, as owner (the "Owner") of [an interest in] the City of San José, California Multifamily Housing Revenue Note (Mariposa Place), Series 2021E-1 (Tax-Exempt) [E]-2 (Taxable)] (the "Governmental Lender Note") evidencing a loan (the "Bank Loan") in the aggregate maximum principal amount of \$[\_\_\_\_\_] from Pacific Western Bank (the "Bank") to the City of San José, California (the "Governmental Lender") pursuant to a Bank Loan Agreement, dated as of January 1, 2022 (the "Bank Loan Agreement") among the Bank, U.S. Bank National Association, as fiscal agent (the "Fiscal Agent") and the Governmental Lender, hereby represents that:

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

2. The Owner acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Owner has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project, the use of proceeds of the Bank Loan and the Borrower Loan and the security therefor so that, as a reasonable investor, the Owner has been able to make its decision to assume the position of the Bank under the Governmental Lender Note or an interest therein. In entering into this transaction, the Owner acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Bank or other aspects of its making the Bank Loan and acquiring the Governmental Lender Note, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Bank Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Bank to secure repayment of the Governmental Lender Note.

3. The Owner is an Approved Institutional Buyer (as defined in the Bank Loan Agreement).

4. The Owner acknowledges that it is [assuming the position of the Bank under the Governmental Lender Note] [purchasing an interest in the Governmental Lender Note] for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Governmental Lender Note; provided, however, that the

Owner may sell or transfer the Governmental Lender Note and the Bank Loan, or any portion of or participation interests in the Governmental Lender Note and Bank Loan, subject to compliance with Section 4.03 of the Bank Loan Agreement, including the delivery to the Governmental Lender and the Fiscal Agent of representations from the transferee to substantially in the form of this investor letter, or otherwise to the same effect as these representations in such other form authorized by the Governmental Lender with no revisions except as may be approved in writing by the Governmental Lender. The Owner agrees to and shall indemnify, hold harmless and defend the Governmental Lender, its officers, Councilmembers, officials and employees, and each of them, against all loss, costs, damages, expenses, suits, judgments, actions and liabilities of whatever nature (including, without limitation, attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from or arising out of or related to its transfer of the Governmental Lender Note, any interest in the Governmental Lender Note and the Bank Loan, or any interest in the Bank Loan in violation of Section 4.03 of the Bank Loan Agreement.

5. The Owner understands that (a) the Governmental Lender Note is a limited obligation of the Governmental Lender, payable solely from funds and moneys pledged and assigned under the Bank Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Note are expressly limited as set forth in the Bank Loan Agreement and related documents, (b) the Governmental Lender Note is not secured by any pledge of any moneys received or to be received from taxation by the Governmental Lender, or State or any political subdivision thereof, and (c) the Governmental Lender Note does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender or the State of California or any political subdivision thereof.

6. The Owner has authority to assume the position of the Bank under the Governmental Lender Note or an interest therein and to execute these representations and any other instructions and documents required to be executed by the Owner in connection with the assumption of the position of the Bank under the Governmental Lender Note or an interest therein. The undersigned is a duly appointed qualified and acting officer of the Owner and is authorized to execute these representations on behalf of the Owner.

7. The Owner understands that the Governmental Lender Note is not registered under the Securities Act of 1933 and that such registration is not legally required as of the date hereof; and further understands that the Governmental Lender Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed on any stock or other securities exchange, and (c) will not carry a rating from any rating agency. The Owner agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of any interest in the Governmental Lender Note by it, as well as the provisions of Section 4.03 of the Bank Loan Agreement, and further acknowledges that any current

exemption from registration of the Governmental Lender Note does not affect or diminish such requirements.

8. None of the Governmental Lender, its City Council, or any of its employees, counsel or agents will have any responsibility to the Owner for the accuracy or completeness of information obtained by the Owner from any source regarding the Borrower or its financial condition or the Project, or regarding the Governmental Lender Note, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Governmental Lender to the Owner with respect to the Governmental Lender Note. The Owner acknowledges that, as between the Owner and all of such parties, the Owner has assumed responsibility for obtaining such information and making such review as the Owner deemed necessary or desirable in connection with its decision to purchase the Governmental Lender Note or any interest therein.

\_\_\_\_\_, as Holder

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

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

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

[Signature Page to Required Transferee Representations]

## EXHIBIT C

### FORM OF WRITTEN REQUISITION OF THE BORROWER – PROJECT FUND

Draw # \_\_\_\_\_

To: U.S. Bank National Association, as Fiscal Agent (the "Fiscal Agent") under that certain Loan Agreement, dated as of January 1, 2022, among Pacific Western Bank, as Bank, the City of San José, California, as Governmental Lender, and the Fiscal Agent (the "Bank Loan Agreement").

You are requested to disburse funds from the [Tax-Exempt Subaccount][Taxable Subaccount] of the Note Proceeds Account of the Project Fund pursuant to Section 8.07 of the Bank Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto.

The undersigned certifies that:

(a) there has been received no notice (i) 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 (ii) 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;

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

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

(d) [for requisitions from the Tax-Exempt Subaccount] such requisition contains no items representing any Costs of Issuance or any other amount constituting an issuance cost under Section 147(g) of the Code, unless such item is being paid solely from the Taxable Subaccount or the Equity Account of the Project Fund;

(e) [for requisitions from the Tax-Exempt Subaccount] not less than 97% of the sum of: (A) the amounts requisitioned by this Requisition to be funded with the proceeds of the Governmental Lender Tax-Exempt Note plus (B) all amounts allocated to the Governmental

Lender Tax-Exempt Note previously disbursed from the Tax-Exempt Subaccount of the Note Proceeds Account of the Project Fund, have been or will be applied by the Borrower to pay Qualified Project Costs;

(f) to the undersigned's current, actual knowledge, 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 Bank Loan Agreement; and

(g) attached as Schedule I to this Requisition is an exhibit that allocates the amount requested hereby from each account of the Project Fund among the sources for payment.

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

SAN JOSE W. SAN CARLOS LP, as Borrower

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

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

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

APPROVED:

PACIFIC WESTERN BANK, a California  
state-chartered bank

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

Authorized Signatory

Schedule I

Payment Instructions

EXHIBIT D

FORM OF WRITTEN REQUISITION  
OF THE BORROWER – CLOSING COSTS FUND

To: U.S. Bank National Association, as Fiscal Agent (the "Fiscal Agent") under that certain Loan Agreement, dated as of January 1, 2022, among Pacific Western Bank, as Bank, City of San José, California, as Governmental Lender, and the Fiscal Agent (the "Bank Loan Agreement").

You are requested to disburse funds from the Closing Costs Fund pursuant to Section 8.06 of the Bank Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference. An invoice or other appropriate evidence of the obligations described on Schedule I is attached hereto. All payments will be made by check or wire transfer in accordance with the payment instructions set forth on Schedule I (or on the attached invoice) and the Fiscal Agent shall have no obligation to authenticate such payment instructions or the authority under which they were given.

The undersigned certifies that the undersigned is a Borrower Representative and 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 Bank Loan Agreement and that the requested disbursement satisfies the requirements of Section 8.06 of the Bank Loan Agreement.

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

BORROWER:

SAN JOSE W. SAN CARLOS LP, as Borrower

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

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

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

The foregoing Requisition is hereby consented to:

BANK:

PACIFIC WESTERN BANK, a California state-chartered bank

By: \_\_\_\_\_  
Authorized Signatory

Schedule I

Payment Instructions

Payee	Purpose	Amount of Payment
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