

FIRST AMENDED AND RESTATED
CDBG AND HOME LOAN AGREEMENT
(Valley Vista Apartments)

This FIRST AMENDED AND RESTATED CDBG AND HOME LOAN AGREEMENT is entered into as of _____, 2009, by and between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Valley Vista Senior Housing, L.P., a California limited partnership ("Borrower"), with reference to the following facts, purposes, and intentions:

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County received Community Development Block Grant Funds from the United States Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended (the "CDBG Funds"). The CDBG Funds must be used by the County in accordance with 24 C.F.R. 570 et seq.

C. American Baptist Homes of the West, a California nonprofit public benefit corporation ("ABHOW") entered in to a CDBG Loan Agreement with the County dated as of April 26, 2007, (the "Original Loan Agreement") pursuant to which ABHOW borrowed One Million One Hundred Eighty Four Thousand Dollars (\$1,184,000) of CDBG Funds (the "Original Loan") to acquire a 4.7 acre parcel of real property located at 20801 San Ramon Valley Boulevard, in the City of San Ramon, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property").

D. In addition to the Original Loan Agreement, the Original Loan is evidenced by a Regulatory Agreement between ABHOW and the County dated as of April 26, 2007, and recorded against the Property in the official records of Contra Costa County as document number No. 2007-125806 (the "Original Regulatory Agreement"), a Deed of Trust dated as of April 26, 2007, and recorded against the Property in the official records of Contra Costa County as document number 2007-125808 (the "Original Deed of Trust"), an Intercreditor Agreement among ABHOW, the County and the Redevelopment Agency of the City of San Ramon dated as of April 26, 2007, and recorded against the Property in the in the official records of Contra Costa County as Instrument No. 2007-125809 (the "Original Intercreditor Agreement"), and a Promissory Note in the amount of the Original Loan dated as of April 26, 2007 (the "Original Note").

E. Pursuant to assignment and assumption agreements dated December 17, 2008, and recorded against the Property in the official records of Contra Costa County as Instrument Nos. 2009-1306 and 2009-1307, the Original Loan Documents were assigned from ABHOW to the Borrower.

F. Thereafter the Original Intercreditor Agreement, the Original Deed of Trust, and the Original Regulatory Agreement were modified by those certain Modification Agreements recorded in the Official Records of Contra Costa County.

G. The County has also received Home Investment Partnership Act funds from HUD pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92.

H. The Borrower intends to construct approximately one hundred five (105) units of housing affordable to extremely-low, and very-low income senior households and one managers' unit on the Property (the "Development").

I. The County and ABHOW are parties to that certain CDBG Project Agreement 06-65B-CD pursuant to which the County committed CDBG Funds to assist the Development, and the County and the Borrower are parties to that certain HOME Project Agreement 09-49-HM pursuant to which the County committed HOME Funds to assist the Development (collectively, the "Project Agreements").

J. In furtherance of the Project Agreements, Borrower has assumed the Original Loan consisting of One Million One Hundred Eighty Four Thousand Dollars (\$1,184,000) of CDBG Funds, and desires to borrow One Million Three Hundred Sixteen Thousand Dollars (\$1,316,000) of HOME Funds for a total loan of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Loan").

K. To evidence the Loan, the County and the Borrower desire to (i) amend and restate the Original Loan Agreement; (ii) amend and restate the Original Regulatory Agreement; (iii) amend and restate the Original Intercreditor Agreement; (iv) reconvey the Original Deed of Trust and enter into a new Deed of Trust; and (v) cancel the Original Note and issue a new Note.

L. The Loan is being made to finance acquisition and construction costs associated with the Development in order to help achieve financial feasibility for the Development and to increase the supply of affordable rental housing in Contra Costa County.

M. The Mitigated Negative Declaration No. IS 99-010 reviewed and approved by the City Council of the City of San Ramon on February 25, 2005, has served as the environmental documentation pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.), for the activities proposed to be undertaken under this Agreement.

N. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) ("NEPA"), the County has completed and approved all applicable environmental review and recommended the mitigation measures described in the attached Exhibit C for the activities proposed to be undertaken under this Agreement.

NOW, THEREFORE, the Parties amend and restate the Original Loan Agreement to read in its entirety as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "ABHOW" has the meaning set forth in Paragraph C of the Recitals.
- (b) "Agency" shall mean the Redevelopment Agency of the City of San Ramon, a public body, corporate and politic.
- (c) "Agreement" shall mean this First Amended and Restated CDBG and HOME Loan Agreement.
- (d) "Approved Development Budget" shall mean the proforma development budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B.
- (e) "Approved Financing" shall mean all of the following loans acquired by the Borrower and approved by the County for the purpose of financing the Development, in addition to the County Loan:
 - (i) Loan from the Agency to the Borrower in the approximate amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) (the "Agency Loan");
 - (ii) County multi-family housing revenue tax exempt bonds in the approximate amount of Nineteen Million One Hundred Sixteen Thousand Two Hundred Thirty Five Dollars (\$19,116,235) (the "Bonds") which Bonds shall be purchased by Wells Fargo Bank, N.A. (the "Bank") and loaned to the Borrower (the "Bond Loan");
 - (iii) Affordable Housing Program Loan from Bank of the West in the amount of Nine Hundred Forty Five Thousand Dollars (\$945,000) (the "AHP Loan");
 - (iv) HUD 202 Capital Advance funds reservation in the approximate amount of Twelve Million Two Hundred Eighty Two Thousand Four Hundred Dollars (\$12,282,400) as evidenced by that certain Section 202 reservation letter dated October 31, 2007;
 - (v) Tax Credit Assistance Program Loan from TCAC in the amount of Four Hundred Forty Six Thousand Five Hundred Fifty One Dollars (\$446,551) (the "TCAP Loan");
 - (vi) Low Income Housing Tax Credit investor equity funds in the approximate amount of Eight Million Nine Hundred Sixty Nine Thousand Six Hundred Forty Dollars (\$8,969,640) (the "Tax Credit Investor Equity"); and

(vii) Capital contribution from the Borrower's general partner in the approximate amount of One Million Thirty Seven Thousand Four Hundred Eighty Five Dollars (\$1,037,485) (the "General Partner Equity").

(f) "Bid Package" shall mean the Borrower's proposed construction bid package to be made available to potential bidders seeking to construct the Development. The contents of the Bid Package are more particularly described in Section 3.2.

(g) "Bond Loan Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants dated as of _____, 2009, between the County as issuer of the Bonds, and the Borrower, associated with the Bond Loan.

(h) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(i) "CDBG" shall mean the Community Development Block Grant program created pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended.

(j) "CDBG Funds" has the meaning set forth in Paragraph B of the Recitals.

(k) "CDBG Loan Funds" shall mean One Million Hundred Eighty-Four Thousand Dollar (\$1,184,000) portion of the Loan that is funded with CDBG Funds.

(l) "City" shall mean the City of San Ramon, a municipal corporation.

(m) "Completion Date" shall mean the date that the City has certified completion of the Development, evidenced by issuance of a final certificate of occupancy for the Development.

(n) "County" has the meaning set forth in the first paragraph of this Agreement.

(o) "County-Assisted Units" shall mean the fifty-two (52) units whose occupancy and rental charges are restricted pursuant to the Loan Documents.

(p) "Deed of Trust" shall mean the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated of even date herewith, among Borrower, as Trustor, Chicago Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents. The form of the Deed of Trust shall be provided by the County.

(q) "Default" shall have the meaning set forth in Section 6.1 below.

(r) "Default Rate" shall have the meaning set forth in Section 6.2(c).

(s) "Development" shall mean the Property and the one hundred and five (105) senior apartment units, including one (1) manager's unit, and attendant site improvements.

(t) "General Partner Loan" means the loan of the HUD 202 Capital Advance funds from Borrower's general partner to the Borrower upon final close of the HUD 202 Capital Advance.

(u) "Hazardous Materials" shall have the meaning set forth in Section 4.9 below.

(v) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.9 below.

(w) "Hazardous Materials Law" shall have the meaning set forth in Section 4.9 below.

(x) "HOME" shall mean the HOME Investment Partnership Act Program pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12705 et seq.), as amended.

(y) "HOME Funds" has the meaning set forth in Paragraph F of the Recitals.

(z) "HOME Loan Funds" shall mean the One Million Three Hundred Sixteen Thousand Dollar (\$1,316,000) portion of the Loan that is funded with HOME Funds.

(aa) "HOME Reporting Term" shall mean the first twenty (20) years of the Term.

(bb) "HUD" has the meaning set forth in Paragraph B of the Recitals.

(cc) "HUD 202 Capital Advance" means a capital advance provided by HUD to ABHOW which will be assigned to the Borrower's general partner and then loaned to the Borrower by Borrower's general partner for permanent financing for the Development pursuant to Section 202 of the Housing Act of 1959, as amended.

(dd) "HUD Capital Advance Documents" means all documents required by HUD for funding of the HUD 202 Capital Advance.

(ee) "HUD Firm Commitment" means the Firm Commitment for Capital Advance issued by HUD, representing HUD's agreement to provide the HUD 202 Capital Advance permanent financing for the Development, subject to specified conditions.

(ff) "HUD Regulatory Term" means the period commencing on the recordation of the HUD Regulatory Agreement and HUD Use Agreement evidencing the HUD 202 Capital Advance, and terminating on the date when the PRAC terminates and is no longer renewed.

(gg) "HUD Residual Receipts Account" means the Development specific reserve account required by HUD to be maintained by Borrower during the HUD Regulatory Term, in which Borrower deposits residual receipts (as such term is defined by HUD) pertaining to the Section 202 Units.

(hh) "Intercreditor Agreement" shall mean the First Amended and Restated Intercreditor Agreement, dated of even date herewith, among the County, the Agency, and the Borrower concerning the Development.

(ii) "Loan" has the meaning set forth in Paragraph I of the Recitals.

(jj) "Loan Documents" shall mean this Agreement, the Note, the Intercreditor Agreement, the Regulatory Agreement, and the Deed of Trust.

(kk) "Modification Agreements" shall mean those certain: Modification of Intercreditor Agreement dated as of _____, 2009 and recorded on _____, 2009 in the Official Records of Contra Costa County as Instrument No. _____ modifying the Original Intercreditor Agreement; Modification of Deed of Trust dated as of _____, 2009 and recorded on _____, 2009 in the Official Records of Contra Costa County as Instrument No. _____ modifying the Original Deed of Trust; and Modification of Regulatory Agreement dated as of _____, 2009 and recorded on _____, 2009 in the Official Records of Contra Costa County as Instrument No. _____ modifying the Original Regulatory Agreement.

(ll) "NEPA" has the meaning set forth in Paragraph N of the Recitals.

(mm) "Note" shall mean the First Amended and Restated Promissory Note dated of even date herewith evidencing Borrower's obligation to repay the Loan. The form of the Note shall be provided by the County.

(nn) "Original Deed of Trust" has the meaning set forth in Paragraph D of the Recitals.

(oo) "Original Intercreditor Agreement" has the meaning set forth in Paragraph D of the Recitals.

(pp) "Original Loan" has the meaning set forth in Paragraph C of the Recitals.

(qq) "Original Loan Agreement" has the meaning set forth in Paragraph C of the Recitals.

(rr) "Original Loan Documents" shall mean the Original Loan Agreement, the Original Deed of Trust, the Original Note, the Original Regulatory Agreement, and the Original Intercreditor Agreement, as such were modified by the Modification Agreements.

(ss) "Original Note" has the meaning set forth in Paragraph D of the Recitals.

(tt) "Original Regulatory Agreement" has the meaning set forth in Paragraph D of the Recitals.

(uu) "Parties" shall mean the County and Borrower.

(vv) "PRAC" means the Project Rental Assistance Contract between HUD and the Borrower regarding rental operating assistance to be provided by HUD for the Development.

(ww) "Project Agreements" has the meaning set forth in paragraph I of the Recitals.

(xx) "Property" has the meaning set forth in paragraph C of the Recitals.

(yy) "Regulatory Agreement" shall mean the First Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated of even date herewith between the County and the Borrower associated with the Loan, to be recorded against the Property.

(zz) "Retention Amount" shall mean Twenty Thousand Dollars (\$20,000) of the Loan, comprised of Ten Thousand Dollars (\$10,000) of the CDBG Loan Funds and Ten Thousand Dollars (\$10,000) of the HOME Loan Funds, the disbursement of which is described in Section 2.7 below.

(aaa) "Section 202" means Section 202 of the Housing Act of 1959, as amended.

(bbb) "Section 202 Units" means the eight-nine (89) units in the Development subject to the PRAC during the HUD Regulatory Term.

(ccc) "Tax Credit Units" means the fifteen (15) units in the Development which are not Section 202 Units.

(ddd) "Term" shall have the meaning set forth in Section 2.8(a) below.

(eee) "Transfer" shall have the meaning set forth in Section 4.15 below.

(fff) "Unit" means one (1) of the one hundred five (105) apartment units to be constructed on the Property.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Approved Development Budget

EXHIBIT C: NEPA Mitigation Requirements

EXHIBIT D: HUD-Required Provisions Rider

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan.

The County shall loan to the Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Loan shall be evidenced by the Note in the form provided by the County. Upon execution of the Note by Borrower the Original Note shall be cancelled and returned to the Borrower and all disbursements under the Original Note shall be deemed to be disbursed under the Note. As of the date of this Agreement, a total of One Million One Hundred Seventy Four Thousand Dollars (\$1,174,000) of the Original Loan has been disbursed to Borrower under the Original Note.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the outstanding principal balance of the Loan shall accrue simple interest at the rate of three percent (3 %) per annum, commencing on the date of disbursement.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan is repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, and the highest rate permitted by law.

Section 2.3 Use of Loan Funds.

(a) The Borrower shall use the Loan to fund the acquisition and construction of the Development (including permits, fees, and financing costs) consistent with the Approved Development Budget.

(b) The Borrower shall not use the Loan for any other purposes without the prior written consent of the County.

(c) The Borrower shall comply with the Project Agreements in the use of the Loan; provided, however, in the event of any conflict between the Project Agreements and this Agreement, the terms of this Agreement shall prevail.

Section 2.4 Security.

Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and recording it as a lien against the Property, equal in lien priority (pursuant to the Intercreditor Agreement) to the deed of trust securing the Agency Loan, and senior in lien priority to the deed of trust securing the AHP Loan. Borrower shall also cause or

permit the Intercreditor Agreement and Regulatory Agreement to be recorded against the Property.

Section 2.5 Subordination.

(a) The Deed of Trust and/or Regulatory Agreement may be subordinated to the lien of a deed of trust executed in connection with the Bond Loan but only on condition that all of the following conditions are satisfied:

(i) The subordination agreement must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Bank or other holder of the Bond Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including: (1) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.

(ii) The subordination described in this section may be effective only during the original term of the Bond Loan and any extension of its term approved in writing by the County.

(iii) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Bond Loan to exercise of any remedies by the County under the Loan Documents.

(iv) Upon a determination by the County's Deputy Director – Redevelopment that the conditions in this Section have been satisfied, the Deputy Director – Redevelopment or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

(v) In the event there is a foreclosure of the Property, the Regulatory Agreement shall be revived according to its original terms if, during the original Regulatory Agreement term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

(b) The County agrees to subordinate the Loan Documents to the HUD Capital Advance Documents pursuant to the terms of the HUD-Required Provisions Rider attached as Exhibit D.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The maximum amount of funds to be disbursed pursuant to this Section 2.6 shall not exceed the amount of the HOME Loan Funds (minus the portion of the Retention Amount attributable to the HOME Loan Funds). The County shall not be obligated to make any disbursements of HOME Loan Funds for construction of the Development or take any other

action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of HOME Loan Funds:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement or the Project Agreements.

(b) The Borrower has delivered to the County a copy of a corporate authorizing resolution authorizing Borrower's execution of the Loan Documents.

(c) The Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.16 below.

(d) The Borrower has caused to be executed and delivered to the County all County Loan Documents and any other instruments, and policies required under the Loan Documents.

(e) The Deed of Trust, the Regulatory Agreement and the Intercreditor Agreement have been recorded against the Property in the Office of the Recorder of the County of Contra Costa.

(f) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any early start of construction.

(g) The County has completed and approved all environmental reviews under NEPA, as necessary for the construction of the Development, and Borrower has provided the County evidence of compliance with all approved NEPA requirements and mitigation measures set forth in the Project Agreements and as described in the attached Exhibit C.

(h) The County has determined that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Borrower has obtained in connection with the Development, are not less than the amount that is necessary to pay for development of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(i) The Borrower has obtained all permits and approvals necessary for the construction of the Development, as required by Section 3.1, and County has received a copy of the building permit required to construct the Development.

(j) The County has received and approved the final plans and specifications for the Development, as required pursuant to Section 3.2 below.

(k) The County has received and approved the general contractor's construction contract that the Borrower has entered or proposed to enter for construction of the Development as required pursuant to Section 3.3 below.

(l) The County has received copies of labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below.

(m) The Borrower has closed all Approved Financing described in Section 1.1(d)(i) through (iii) and (v) and is eligible to receive the proceeds thereof, subject to the terms and conditions of each Approved Financing.

(n) The County has received reasonable evidence that the local match requirements set forth in 24 C.F.R. 92.218 et seq., have been satisfied pursuant to Section 4.2 of this Agreement.

(o) The HUD Firm Commitment shall have either been issued directly to Borrower's general partner or assigned to Borrower's general partner and shall include an approval from HUD for the use of the HUD 202 Capital Advance funds as permanent financing.

(p) The Borrower shall have received HUD authorization for the General Partner Loan as evidenced in the HUD Firm Commitment.

(q) The County shall have received a fully executed copy of the Agreement to enter into a PRAC.

(r) The County has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

Section 2.7 Conditions Precedent to Disbursement of Retention.

The County shall not be obligated to disburse the Retention Amount unless the following conditions precedent are satisfied:

(a) The County has received a completion report from the Borrower setting forth (i) the income, household size, and ethnicity of tenants of the Development, (ii) the Unit size, rent amount and utility allowance for all Units in the Development, and (iii) designation of the accessible and/or adaptable Units in the Development.

(b) The County has received a cost certification for the Development from the Borrower showing all uses and sources.

(c) The County has received from the Borrower copies of the final certificate of occupancy for the Development, or other equivalent document.

(d) The County has received for the Borrower current evidence of the insurance coverage meeting the requirements of Section 4.16 below.

(e) The County has received from Borrower a form of lease and marketing plan for the Development.

(f) The County has received from Borrower evidence of marketing for any vacant units in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of units, as applicable.

(g) The County has received from Borrower all relevant contract activity information including compliance with Section 3 and MBE/WBE requirements.

(h) The County has received from Borrower a copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager.

(i) If the Borrower was required to pay prevailing wages under the Davis-Bacon Act (40 U.S.C. 3141-3148), the County has received from Borrower all certified payrolls, and any identified payment issues have been resolved, or the Borrower is working diligently to resolve any such issues.

(j) The Borrower has provided the County copies of the final certificate of occupancy and recorded notice of completion for the Development.

(k) The County has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. Borrower shall apply the disbursement for the purpose(s) requested.

Section 2.8 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Term. The Loan and this Agreement shall have a term that commences on the date of this Agreement and expires on the date fifty-five (55) years after the Completion Date (the "Term").

(b) Repayment during HUD Regulatory Term. No later than May 15 of each calendar year, commencing on May 15 of the year following the calendar year in which the Development is placed in service and ending on the expiration of the HUD Regulatory Term, the Borrower shall make the following repayments which shall be credited first against accrued interest, if any, and then against outstanding principal:

(i) Section 202 Units: Borrower shall make repayments of the Loan equal to the County's Prorata Percentage (as defined in the Intercreditor Agreement) of seventy-five percent (75%) of the total amount of funds, if any, in the HUD Residual Receipts Account that are approved for distribution by HUD.

(ii) Tax Credit Units: Borrower shall make repayments of the Loan equal to the County's Prorata Percentages of Lender's Share of Residual Receipts (as defined in the Intercreditor Agreement). For the purposes of this Section, Residual Receipts shall be determined based on Gross Revenue and Annual Operating Expenses (as defined in the Intercreditor Agreement) attributable to the Tax Credit Units only.

(c) Repayment after Expiration of HUD Regulatory Term. No later than May 15 of each calendar year, commencing on the year after the year of the expiration of the HUD Regulatory Term, the Borrower shall make repayments of the Loan equal to the County's Prorata Percentage of the Lenders' Share of Residual Receipts attributable to all Units in the Development.

(d) Repayment from Net Proceeds of Permanent Financing. Borrower shall make a special repayment from Net Proceeds of Permanent Financing, if any, as defined in and set forth in the Intercreditor Agreement.

(e) Final Payment. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the County, (ii) the date of any Default, and (iii) the expiration of the Term.

(f) Prepayment. The Borrower shall have the right to prepay the Loan at any time without penalty. However, the Regulatory Agreement and the Deed of Trust shall remain in effect for the entire term of the Regulatory Agreement, regardless of any prepayment.

Section 2.9 Non-Recourse.

Except as provided below, neither the Borrower, nor any general or limited partner of the Borrower, shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, and interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the County thereunder, or (b) be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the County under Sections 3.7, 4.8, 4.9 and 7.4 of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the

failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals.

All permits and approvals necessary for the construction of the Development on the Property must be received no later than October 30, 2009, or such later date that the County may approve, or the County, at its option, and with thirty (30) days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Bid Package.

(a) Not later than thirty (30) days prior to the Borrower's proposed date for advertising the Bid Package, the Borrower shall submit to the County Department of Conservation and Development - Redevelopment Division a copy of the Borrower's proposed Bid Package that the Borrower shall utilize to select the general contractor and, as applicable, subcontractors for the Development. The Bid Package shall include, but shall not be limited to, (i) a copy of the proposed construction contract, (ii) a copy of the proposed invitation to bid, (iii) other procurement documentation reasonably requested by the County, including, but not limited to, evidence that Borrower shall obtain a bid guarantee (in a form reasonably acceptable to the County) from each bidder equivalent to five percent (5%) of the bid price, and (iv) all Construction Plans for the Development. As used in this Agreement, "Construction Plans" shall mean all construction documentation upon which Borrower and Borrower's contractor, if any, shall rely in constructing all the improvements on the Property (including the Units, landscaping, parking, and common areas) and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").

(b) The County Department of Conservation and Development shall, if the Bid Package submitted conforms to the provisions of this Agreement, approve in writing the Bid Package. Unless rejected by the County Department of Conservation and Development for its failure to comply with the foregoing requirements within fifteen (15) days after receipt by the County, the Bid Package shall be deemed accepted.

(c) If rejected by the County Department of Conservation and Development in whole or in part, Borrower shall submit a new or a corrected Bid Package within fifteen (15) days after notification of the County's rejection and the reasons therefor. The County shall then have fifteen (15) days to review and approve Borrower's new or corrected Bid Package. The provisions of this Section relating to time periods for approval, rejection, or resubmission of a

new or corrected Bid Package shall continue to apply until the Bid Package has been approved, or deemed approved by the County Community Development Department, and Borrower shall not publish the Bid Package until the County Department of Conservation and Development has approved the Bid Package (or the Bid Package has been deemed approved pursuant to this Section).

Section 3.3 Construction Contract.

(a) Not later than thirty (30) days prior to the proposed commencement of construction of the Development, the Borrower shall submit to the County for its approval the proposed construction contract for the Development. All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that the Borrower enters for construction of the Development shall provide that at least ten percent (10%) of the costs incurred shall be payable only upon completion of construction, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract shall include all applicable CDBG and HOME requirements set forth in Section 4.8 below. The County's approval of the construction contract shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve or disapprove it within ten (10) working days. If the construction contract is not approved by the County, the County shall set forth in writing and notify the Borrower of the County's reasons for withholding such approval. The Borrower shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in ten (10) working days in accordance with the procedures set forth above. Any construction contract executed by the Borrower for the Development shall be in the form approved by the County.

Section 3.4 Construction Bonds.

Prior to commencement of construction of the Development, the Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the Development. Such bonds shall name the County as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of construction of the Development no later than November 15, 2009 or such later date that the County may approve.

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than November 15, 2011 or such later date that the County may approve.

Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages.

(a) Borrower shall construct the Development in conformance with the plans and specifications approved by the City Building Department. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the County. A written change order authorized by the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (1) any change in the work the cost of which exceeds Twenty-Five Thousand Dollars (\$25,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Seventy-Five Thousand Dollars (\$75,000) or ten percent (10%) of the Loan amount, whichever is less; or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the County. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Borrower shall cause all work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation and to the extent applicable, the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations, as further set forth in subsection (c) below, and state prevailing wages pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto, as further set forth in subsection (d) below; (ii) the property standards set out in 24 C.F.R. 5.701 et seq., and 24 C.F.R. 92.251; and (iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the County for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) The Borrower shall cause construction of the Development to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148). The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive repayment of the Loan and the reconveyance of the Deed of Trust.

(d) This Agreement has been prepared with the intention that the Loan meets the exception set forth in Labor Code Section 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by any party regarding the applicability of the provisions of Labor Code Section 1720 et seq. To the extent required by applicable law, the Borrower shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). The Borrower shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. The Borrower shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and apprentices have been employed as required by Labor Code Sections 1777.5 et seq. Copies of the currently applicable current per diem prevailing wages are available from DIR. During the construction of the Development, Borrower shall and shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

(e) In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of six (6) Units shall be constructed to be fully accessible to households with a mobility impaired member and an additional two (2) Units shall be fully accessible to hearing and/or visually impaired persons.

Section 3.8 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws, including, but not limited to the information required under 24 C.F.R. Section 92.351(a) (the "Marketing Plan").

(b) Upon receipt of the Marketing Plan, the County shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within

fifteen (15) days. If the County does not approve the revised Marketing Plan, Borrower shall be in default hereunder.

Section 3.9 Equal Opportunity.

During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.10 Minority and Women-Owned Contractors.

Borrower will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in Contra Costa County of bid opportunities for the construction of the Development. Documentation of such notifications shall be maintained by Borrower and available to the County as requested.

Section 3.11 Progress Reports.

Until such time as Borrower has received a certificate of occupancy from the County for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.15 below.

Section 3.12 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Development.

Section 3.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either

pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 3.14 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.15 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget. Borrower shall submit any required amendments to the Approved Development Budget to the County for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the County shall be required to amend the Approved Development Budget where the total budget or any line item varies by more than ten percent (10%).

Section 3.16 Developer Fee.

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount allowed by the California Tax Credit Allocation Committee and as approved by the County in the Approved Development Budget.

Section 3.17 Capital Contributions.

The Borrower shall cause its general partner and limited partner to make the capital contributions described in subsection 1.1(d)(vi) and (vii) above in accordance with the documents therefor, and shall utilize such funds to pay costs of the Development, consistent with the Approved Development Budget.

Section 3.18 NEPA Mitigation Requirements.

Borrower shall comply with the NEPA mitigation requirements in the construction of the Development as set forth in the attached Exhibit C.

Section 3.19 Development Services.

ABHOW has entered into that certain Development Management Agreement dated January 10, 2007, for development management services with Satellite Housing, Inc. (the "Development Agreement"). The Borrower shall submit for County's approval any amendments to the Development Agreement and notify County of any defaults thereunder. Unless the proposed amendment is disapproved by County within thirty (30) days of receipt thereof, which disapproval shall state with reasonable specificity the basis therefor, it shall be deemed approved. Any notice of a proposed amendment from Borrower to County shall indicate that County's failure to disapprove the proposed amendment within thirty (30) days will result in such proposed amendment being deemed approved by County.

ARTICLE 4 LOAN REQUIREMENTS

Section 4.1 Compliance with Project Agreements.

(a) Borrower shall comply with the terms of the Project Agreements, and any breach under the Project Agreements subject to the notice and cure periods set forth in Section 6.1(c) below, shall be considered a Default under this Agreement. The Project Agreements are hereby incorporated into this Agreement by this reference.

Section 4.2 Match Requirement.

The Borrower shall ensure that the Loan is matched with a minimum of Three Hundred Twenty Nine Thousand Dollars (\$329,000) in other, non-federal sources, pursuant to and eligible under applicable HOME regulations.

Section 4.3 Financial Accountings and Post-Completion Audits.

No later than sixty (60) days following completion of construction of the Development, Borrower shall provide to County a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) days following completion of construction of the Development, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development.

Section 4.4 Annual Operating Budget.

At the beginning of each fiscal year of the Term, Borrower shall provide to the County an annual budget for the operation of the Development. Unless rejected by the County in writing within fifteen (15) days after receipt of the budget, said budget shall be deemed accepted. If rejected by the County in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the County's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets shall continue to apply until such budget has been approved by the County.

Section 4.5 Information.

Borrower shall provide any information reasonably requested by the County in connection with the Development, including (but not limited to) any information required by HUD in connection with Borrower's use of the Loan funds.

Section 4.6 Records.

(a) The Borrower shall keep and maintain at the Development, or elsewhere with the County's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental agency shall at all reasonable times be open for inspection by the County at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements including but not limited to those set forth in Subpart K of 24 C.F.R. 570 and 24 C.F.R. 92.508. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Borrower shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current and in such a form as to allow the County to comply with the recordkeeping requirements contained in 24 C.F.R. 92.508. Such records shall include but not be limited to:

- (i) Records providing a full description of the activities undertaken with the use of the HOME Loan Funds and CDBG Loan Funds;
- (ii) Records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program set forth in 24 C.F.R. 570.208;
- (iii) Records demonstrating compliance with the HUD property standards and lead-based paint requirements;

(iv) Records required to determine the eligibility of activities under CDBG Regulations set forth in 24 C.F.R. 570 et seq.;

(v) Records demonstrating compliance with the affordability and income requirements for tenants;

(vi) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements, as applicable;

(vii) Financial records as required by 24 C.F.R. 92.505, 24 C.F.R. 570.502, and OMB Circular A-110 (24 C.F.R. 84);

(viii) Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

(ix) Records demonstrating that tenant leases comply with the HOME Requirements set forth in 24 C.F.R. 92 et seq.; and

(x) Records demonstrating compliance with Section 3 of the Housing and Urban Development Act of 1968 and other applicable labor requirements listed in Section 3.7 above, including certified payrolls from the Borrower's general contractor evidencing that applicable prevailing wages have been paid.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.7 County Audits.

Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which shall include information on all of Borrower's activities and not just those pertaining to the Development. In addition, the County or any designated agent or employee of the County at any time shall be entitled to audit all of Borrower's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of such audit to Borrower.

Section 4.8 HOME and CDBG Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Loan funds as set forth in 24 C.F.R. Part 92, and CDBG Loan Funds as set forth in 24 C.F.R. 570 et seq., including but not limited to the requirements of the Regulatory Agreement and the Project Agreements. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations shall govern. During the HOME Reporting Term, these requirements shall be federal

requirements, implemented by the County; thereafter, these requirements shall be deemed local County requirements.

(b) The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. 58 et seq., which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. 100 et seq.; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.); the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. 107 et seq.; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; and Executive Order 12138 as amended by Executive Order 12608.

(v) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. 35 et seq.

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and implementing regulations at 49 C.F.R. 24 et seq.; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code 7260 et seq. and implementing regulations at 25 California Code of Regulations 6000 et seq. If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall prepare and submit a relocation plan to the County for approval. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other

obligations associated with complying with such relocation laws. The Borrower shall indemnify, defend (with counsel reasonably chosen by the County), and hold harmless the County against all claims which arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

(vii) Discrimination against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. 1500 et seq., as amended from time to time.

(ix) Uniform Administrative Requirements – HOME. The provisions of 24 C.F.R. 92.505 regarding cost and auditing requirements.

(x) Uniform Administrative Requirements - CDBG. The provisions of 24 C.F.R. 570.502 regarding cost and auditing requirements.

(xi) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), as amended, 12 U.S.C. 1701(u) requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. Section 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. 135 et seq., which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135 et seq., and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135 et seq. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135 et seq.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 C.F.R. 135 et seq. require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. 135 et seq.

(6) Noncompliance with HUD's regulations in 24 C.F.R. 135 et seq. may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

(xii) Labor Standards. The applicable labor requirements set forth in 24 C.F.R. 92.354. The prevailing wage requirements of the Davis-Bacon Act (as referred to in Section 3.7(c) above) and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be

paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1.5 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(xiii) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.

(xiv) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 et seq. and implementing regulations at 24 C.F.R. 87 et seq.

(xv) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.) and the procedures set forth in 36 C.F.R. 800 et seq.

(xvi) Religious Organizations. If the Borrower is a religious organization, as defined by the CDBG and/or HOME requirements, the Borrower shall comply with all conditions prescribed by HUD for the use of CDBG and/or HOME funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 570.200(j) and 24 C.F.R. 92.257.

(xvii) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

Section 4.9 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or

regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the County and its boardmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the County's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's reasonable judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is

required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.10 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County shall

have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in the County's reasonable judgment after consultation with the Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs and thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not make repairs, then any insurance proceeds collected for such damage or destruction shall be distributed as if such proceeds were Residual Receipts (as defined in the Intercreditor Agreement), subject to the rights of the Senior Lenders.

Section 4.11 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

Section 4.12 Notice of Litigation.

Borrower shall promptly notify the County in writing of any litigation which has the potential to materially affect Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.13 Operation of Development as Affordable Housing.

(a) Promptly after completion of construction, the Borrower shall operate the Development as an affordable housing development consistent with (i) HUD's requirements for use of the HOME Loan Funds and CDBG Loan Funds, and (ii) the Regulatory Agreement.

(b) Before leasing any Unit in the Development, the Borrower shall submit its proposed form of lease agreement for the County's review and approval in accordance with the Regulatory Agreement.

(c) Before leasing the Development, the Borrower must provide the County, for its review and approval, with the Borrower's written tenant selection plan. Borrower's tenant

selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d) and 24 C.F.R. Part 574, and any modifications thereto.

(d) The Borrower must determine the income eligibility of each tenant household in a County-Assisted Unit pursuant to the County's approved tenant certification procedures within sixty (60) days before the household's expected occupancy of one of the Development's Units. The Borrower shall certify each tenant household's income on an annual basis.

(e) The maximum household income of a household occupying a County-Assisted Unit in the Development, and the total charges for rent, utilities, and related services to each household occupying a County-Assisted Unit, shall be maintained as provided in the Regulatory Agreement.

Section 4.14 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age (except lawful senior housing), disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 4.15 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement. The County Deputy Director – Redevelopment is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Except for those Transfers approved hereunder, no Transfer shall be permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County approves the grant of the security interests in the Property for Approved Financing.

(d) The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the

limited partner capital contributions provided for in the amended partnership agreement approved by the County; and (ii) in subsequent Transfers, Merritt Community Capital Corporation or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(e) The County hereby approves a Transfer of the Property from the Borrower to ABHOW or a non-profit affiliate of ABHOW, and an assumption of the Loan by such transferee at the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 42 (i)(1)), pursuant to an option agreement as described in Borrower's partnership agreement, provided that the transferee expressly assumes the obligations of the Borrower under the Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the County.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Borrower's partnership agreement, the County hereby approves the Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the County, which approval shall not be withheld unreasonably.

Section 4.16 Insurance Requirements.

The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Builders' risk insurance during the course of the construction, and, upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than the Six Hundred Fifty Eight Thousand Dollars (\$658,000) naming the County as a Loss Payee, as its interests may appear.

The Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g).

(f) The required insurance shall be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(g) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(h) All policies and bonds shall contain (a) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (c) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 4.17 Anti-Lobbying Certification.

The Borrower certifies, to the best of Borrower's knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows:

- (a) Organization. Borrower is a duly organized California limited partnership, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.
- (b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.
- (c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.
- (d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.
- (e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.
- (f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations

of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the County pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved in writing by the County.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction or rehabilitation of the Development in accordance with the plans and specifications approved by the County.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Borrower under this Agreement:

- (a) Failure to Construct. Failure of Borrower to commence and complete construction of the Development within the times set forth in Article 3 above;
- (b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the County that such payment is due pursuant to the Loan Documents.
- (c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to the Borrower and to Borrower's limited partner as provided in Section 7.9 below ("Permitted Limited Partner") or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. The Permitted Limited Partner shall have thirty (30) additional days to cure a breach beyond the cure periods for the Borrower described in this subsection. If a Permitted Limited Partner cannot cure a Default because the Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of the Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of the Borrower in order to effect a cure of the Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than one hundred eighty (180) days after the date of receipt by the Permitted Limited Partner of written notice of Default.
- (d) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing and any applicable notice and cure period has expired.
- (e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, or seeking any arrangement for Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, in

bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the County) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.15.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Development, Default may be declared under this subsection only if the

failure of representation or warranty also has a material adverse effect on the operation of the Development.

Section 6.2 Remedies.

The County agrees that any cure of a Default by a Permitted Limited Partner of the Borrower shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Special Remedy for Breach of Use Requirement. Pursuant to 24 C.F.R. 570.503(b)(7)(ii), if after acquisition of the Property, the Borrower changes the planned use of the Property to a non-CDBG eligible use, or if after completion of construction of the Development, the Borrower ceases to use the Development to primarily benefit low and moderate income persons, the County shall have the right to require the Borrower to pay the County an amount equal to the current market value of the Development (as determined by appraisal) less any portion of that value attributable to non-CDBG Funds used for the development of the Development (based on a pro rata allocation of funds used by Borrower in its development of the Development). Funds recovered from Borrower pursuant to this subsection shall be credited against amounts outstanding under the Note.

(d) Right to Cure at Borrower's Expense. The County shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the lesser

of the maximum rate permitted by law and ten percent (10%) per annum (the "Default Rate") from the date of expenditure until the date of reimbursement.

Section 6.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or

operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The County Deputy Director – Redevelopment is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any material change in the amount or terms of this Agreement is approved by the County Board of Supervisors, or in the event the amounts or terms of financing provided by other parties for the Development is revised, requiring conforming amendments to the County Loan documents.

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the County harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the County, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County shall be personally liable to Borrower in the event of any default or breach by the County or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Discretion Retained By County.

The County's execution of this Agreement in no way limits the discretion of the County in the permit and approval process in connection with development of the Development.

Section 7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds

thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of the Borrower, or immediate family member of any of the preceding, shall make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations manual and codes, and Government Code Section 1090.

(d) The Borrower shall comply with the conflict of interest provisions set forth in 24 C.F.R. Section 92.356 and 24 C.F.R. Section 570.611.

Section 7.9 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County:

County of Contra Costa
Department of Conservation and Development
2530 Arnold Drive, Suite 190
Martinez, CA 94553
Attention: Deputy Director - Redevelopment

Borrower:

Valley Vista Senior Housing, L.P.
c/o Carmel Senior Housing, Inc.
6120 Stoneridge Mall Road, 3rd Floor
Pleasanton, CA 94588
Attention: President

With a copy to:

MCCC, LLC
c/o Merritt Community Capital Corporation
1970 Broadway, Suite 250
Oakland, CA 94612
Attention: Bernard T. Deasy

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law.

This Agreement shall be governed by and construed in accordance with California law.

Section 7.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the County and its successors and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other

Party within ten (10) days of receipt of the notice. In no event shall the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 County Approval.

The County has authorized the County Deputy Director – Redevelopment to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 7.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan. If there is any conflict between this Agreement and the Project Agreements, then this Agreement shall control.

Section 7.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 7.20 HUD Rider Provisions.

During the term of the HUD 202 Capital Advance the County agrees to comply with the provisions set forth in the HUD-Required Provisions Rider attached hereto as Exhibit D and incorporated into this Agreement.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

COUNTY:

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: _____
James Kennedy
Deputy Director – Redevelopment

APPROVED AS TO FORM:

Silvano B. Marchesi, County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

BORROWER:

Valley Vista Senior Housing, L.P., a California limited partnership

By: Carmel Senior Housing, Inc., a California nonprofit public benefit corporation, its general partner

By: _____

Its: _____

EXHIBIT A

Legal Description

The land is situated in the State of California, County of Contra Costa, and is described as follows:

EXHIBIT B

Approved Development Budget

EXHIBIT C

NEPA Mitigation Measures

1. Noise: Based upon the Noise Assessment prepared per HUD guidelines, the proposed site is impacted by external noise that has a rating of 79.0 DNL, which is "Unacceptable" per HUD guidelines. An EIS is not required due to the fact that this is the only issue for the project. The following noise mitigations are required in the final project:

(a) The construction materials and methods be evaluated and improved if necessary, to supply a 35 sound transmission class (STC) rated combined walls, windows, doors, and vent ducts on the exterior walls facing onto the 680 freeway and San Ramon Valley Boulevard. (See page 35 of HUD Noise Guidebook for combined method).

(b) In addition, an air circulation system for all interior spaces is required.

(c) Exterior outdoor recreation activity area patios, balconies, etc. must be mitigated to meet HUD/EPA standard of maximum 65 DNL with a goal of 55 DNL.

(d) To assure that an overall STC rating of 35 is achieved, prior to final approval of building plans, a completed Description of Noise Attenuation Measures must be prepared which demonstrates that the projects noise exposure will be adequately mitigated. A copy of the completed Description of Noise Attenuation Measures, approved by Certifying Officer, will then be included in the Environmental Review for the project.

2. Storm Water: Projects must comply with the C3 Requirements implemented by the County Public Works Department. Projects with more than 10,000 square feet of new impervious area are required to meet these requirements.

3. The active Calaveras Fault crosses the western portion of the project site within which development of structures intended for human occupancy is precluded. The applicant's consultant recommends a structural setback on either side of the identified fault exposed in trenches and where soil offset indicates the fault is younger than eleven thousand (11,000) years. The structural setback established by Geolith Consultants is in accordance with the City of San Ramon's General Plan EIR. All of the mitigation measures from the City of San Ramon's Initial Study/Mitigated Neg. Dec. (Prepared by Mills Associates, 9/2004) are applicable.

EXHIBIT D

HUD-Required Provisions Rider

This HUD-Required Provisions Rider (the "Rider") is dated as of _____, 2009, and is attached to and made a part of that certain First Amended and Restated CDBG and HOME Loan Agreement by and between Valley Vista Senior Housing, L.P., a California limited partnership (the "Borrower"), and the County of Contra Costa, a political subdivision of the State of California (the "County") (the "Loan Agreement"), a First Amended and Restated Promissory Note from Borrower to County (the "County Note") in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Loan"), First Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants by and between Borrower and the County (the "Regulatory Agreement"), a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing by Borrower to the County (the "County Deed of Trust"), and a First Amended and Restated Intercreditor Agreement by and among the County, the Redevelopment Agency of the City of San Ramon, and the Borrower, all dated _____, 2009 (collectively, the "County Documents"), relating to the property commonly known as Valley Vista Senior Apartments (the "Development"). In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the County Documents, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the County Documents. As used in this Rider, the term "HUD Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Development, **HUD Project No. 121-EE201-NP-WAH/CA39-S071-005**:

- A. Deed of Trust from Borrower to the general partner of Borrower, which beneficial interest shall be assigned to HUD by collateral assignment, to be recorded against the Property (the "HUD Deed of Trust");
 - B. Capital Advance Program Regulatory Agreement between Borrower and HUD to be recorded against the Property ("HUD Regulatory Agreement");
 - C. Capital Advance Program Use Agreement between Borrower and HUD to be recorded against the Property (the "HUD Use Agreement");
 - D. HUD Security Agreement between Borrower and the general partner of Borrower, which beneficial interest shall be assigned to HUD by collateral assignment (the "HUD Security Agreement"); and
 - E. HUD Project Rental Assistance Contract (the "PRAC").
1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as the HUD Documents, or any of them, are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.

2. Subordination. The covenants contained in the County Documents shall be subordinate to the rights of HUD under the HUD Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the County Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Property by power of sale, foreclosure, or by deed in lieu of foreclosure. In addition, so long as the HUD Documents are in effect, in the event that there are any conflicts between the terms and conditions in the County Documents and the terms and conditions of the HUD Documents and HUD rules and regulations pertaining thereto, the HUD Documents and HUD rules and regulations shall prevail. No default may be declared under the County Documents without HUD prior written consent.
3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Development, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the County Regulatory Agreement, and compliance by the Borrower with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations of the County Regulatory Agreement, or other matters set forth in the County Regulatory Agreement, shall be deemed to be in compliance with the requirements of the County Documents. Nothing in the County Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to the management, operation or occupancy of the Development; nor can the County Documents in any way jeopardize the continued operation of the Development on terms at least as favorable to existing as well as future tenants.
4. County Loan Disbursement. Upon continued satisfaction of the conditions precedent to loan disbursement set forth in the Loan Agreement, the County shall disburse the County Loan proceeds to Borrower from time to time following approval by the County of Borrower's requisitions in accordance with the County Documents. Requisitions shall be submitted only to the County for approval and disbursement pursuant to the Loan Agreement.
5. Residual Receipts. Any whole or partial repayment of the principal and any other payments as set forth in the County Documents that are made after initial occupancy of the Development and after the PRAC has been executed shall be made only from Residual Receipts (as defined in the HUD Documents), and then only after obtaining the prior written approval of HUD, or from the Borrower's own funds.
6. Indemnification. Enforcement by the County of any indemnification provisions in the County Documents will not and shall not result in any monetary claim against the Development, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Development other than Residual Receipts authorized for release by HUD, without the prior written consent of HUD, but County shall have the right to add any amounts due the County pursuant to indemnification provisions in the County Documents to the principal

amount of the County Loan and the County Note, and interest shall accrue thereon commencing on the date indemnification payments are due.

7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350-1 Rev-1) ("TPA") shall constitute approval of the transfer by the County and the Borrower shall deliver to the County, at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Borrower shall require the transferee to expressly assume the Borrower's obligations under the County Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Borrower and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The County shall have the right to specifically enforce the requirement that any transferee assume the Borrower's obligations under the County Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the County Documents.
8. Default under County Documents. The County shall not declare a default under the County Documents unless it has received the prior written approval of HUD, and the County's right to accelerate the County Note during the term of the HUD Documents shall be enforceable only with the prior written approval of HUD.
9. Receiver. The County, for itself, its successors and assigns further covenants and agrees that in the event of the appointment of a receiver in any action by the County, its successors or assigns, to foreclose the County Deed of Trust, no rents, revenue or other income of the Development collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the County Deed of Trust, except from Residual Receipts, if any. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the County is the beneficiary under the County Deed of Trust, the County cannot be a mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD or the County, as a receiver or a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the County Documents, with or without court action, no rents, revenue or other income of the Development collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the County Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Development in accordance with all provisions of the HUD Documents.
10. Deed-in-Lieu of Foreclosure. In the event that HUD acquires title to the Property by deed-in-lieu of foreclosure, the lien of the County Deed of Trust will automatically terminate subject to the conditions as hereinafter described. The County may cure a default under the HUD Deed of Trust prior to conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the Borrower of a proposed tender of title in the event

HUD decides to accept a deed-in-lieu of foreclosure. HUD will only give such written notice if, at the time of the placing of the County Deed of Trust against the Property, HUD receives a copy of an endorsement to the title policy of the Borrower or the County which indicates that (a) the County Deed of Trust has been recorded and (b) HUD is required to give notice of any proposed election or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated in the County Deed of Trust or such other address as may subsequently, upon written notice to HUD, be designated by the County as its legal business address. The County shall have thirty (30) days to cure the default after notice of intent to accept a deed-in-lieu of foreclosure is mailed.

11. Borrower's Notice to the County. Notwithstanding the requirements set forth in Paragraph 10 above, in the event that Borrower contemplates executing a deed-in-lieu of foreclosure, Borrower shall first give the County thirty (30) days' prior written notice; provided, however, that the failure of the Borrower to give said notice shall have no effect on the right of HUD to accept a deed-in-lieu of foreclosure.
12. Amendment. No amendment to the County Documents made after the date of this Rider shall have any force or effect until and unless such amendment is approved in writing by HUD.

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EXHIBIT A	Legal Description of the Property
EXHIBIT B	Approved Development Budget
EXHIBIT C	NEPA Mitigation Measures
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FIRST AMENDED AND RESTATED
CDBG AND HOME LOAN AGREEMENT

Between

County of Contra Costa

and

Valley Vista Senior Housing, L.P.,
a California limited partnership

Valley Vista Apartments