

CDBG LOAN AGREEMENT  
(Future Colours)

This CDBG Loan Agreement (the "Agreement") is dated December 8, 2010, and is between the COUNTY OF CONTRA COSTA, political subdivision of the State of California (the "County"), and FUTURE COLOURS CORP., a California nonprofit public benefit corporation (the "Borrower").

RECITALS

- A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.
- B. The County has received 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 ("CDBG Funds"). Such funds must be used by the County in accordance with 24 C.F.R. Part 570 et seq.
- C. The Borrower intends to acquire real property located at 1579 N. Mitchell Canyon Road in the City of Clayton, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). The Property is improved with a single family home that is operated as a licensed adult residential care facility for persons with developmental disabilities.
- D. The Borrower is in contract to purchase the Property from Harmony Home, Associated ("Harmony"). In 1986, the County loaned One Hundred Nineteen Thousand Six Hundred Dollars (\$119,600) of CDBG Funds to Harmony to assist in the purchase of the Property by Harmony. Under the terms of the promissory note executed by Harmony for the benefit of the County (the "Harmony Note"), Harmony is obligated to pay the County 64.65% of the sales price of the Property upon its sale by Harmony. Based on the Property's current appraised value of Seven Hundred Thousand Dollars (\$700,000), the amount due to the County by Harmony upon the sale of the Property to Borrower is Four Hundred Fifty-Two Thousand Five Hundred Fifty Dollars (\$452,550).
- E. In order to prevent an interruption in services to the residents of the licensed facility located on the Property, the County is willing to simultaneously (i) cancel the Harmony Note, as evidence of it having been repaid in full by Harmony, and (ii) lend Borrower Four Hundred Fifty-Two Thousand Five Hundred Fifty Dollars (\$452,550) (the "Loan").
- F. The County has the authority to extend the Loan to the Borrower pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that will further a county's public purposes. In addition, the County has the authority to loan the CDBG Funds to provide housing to low and moderate income persons pursuant to 24 C.F.R. 570.201(a).

- G. The Borrower is required to apply the Loan to the acquisition of the Property. The financial feasibility of operating the Property as a residential care facility is enhanced as a result of the Loan. In exchange for the assistance provided by the County to the Borrower through the extension of the Loan, the Borrower is required to continue to operate the Property as a residential care facility for persons with developmental disabilities.
- H. The California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA") imposes no conditions on the County's consideration and approval of this Agreement, because the project underlying this Agreement, (i) can be seen with certainty to have no possibility of having significant effects on the environment pursuant to 14 California Code of Regulations 15061(b)(3); or (ii) is exempt from CEQA requirements under the categorical exemption set forth in 14 California Code of Regulations Section 15301.
- I. The National Environmental Policy Act of 1969, as amended (42 U.S.C. Section 4321-4347) ("NEPA"), imposes no conditions on the County's consideration and approval of this Agreement, because the project underlying this Agreement is exempt from NEPA requirements under the categorical exclusion set forth in 24 C.F.R. Section 58.35(a)(5).

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

- (a) "Agreement" means this CDBG Loan Agreement.
- (b) "Appreciated Value" means the then-current fair market value of the Property minus any portion of the then-current fair market value of the Property that is attributable to expenditures of non-CDBG funds used in Borrower's acquisition of the Property.
- (c) "Approved Acquisition Budget" means the proforma acquisition budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B.
- (d) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(e) "CDBG" means 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.

(f) "CDBG Funds" has the meaning set forth in Recital B of this Agreement.

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

(h) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as Trustor, Security Union Title Insurance Company, as trustee, and the County, as beneficiary, which, once recorded, will encumber the Property and secure repayment of the Loan and performance of the covenants of the Loan Documents. The form of the Deed of Trust will be provided by the County.

(i) "Event of Default" has the meaning set forth in Section 5.1.

(j) "Extension Term" has the meaning set forth in Section 2.1.

(k) "Harmony Loan" means a loan from Harmony to Borrower in an aggregate principal amount not exceeding Two Hundred Forty-Seven Thousand Four Hundred Fifty Dollars (\$247,450.00) that is subordinate to the Loan in lien priority.

(l) "Hazardous Materials" has the meaning set forth in Section 3.6.

(m) "Hazardous Materials Claims" has the meaning set forth in Section 3.6.

(n) "Hazardous Materials Law" has the meaning set forth in Section 3.6.

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

(p) "Initial Term" has the meaning set forth in Section 2.1.

(q) "Loan" has the meaning set forth in Paragraph E of the Recitals.

(r) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(s) "Note" means the promissory note of even date herewith that evidences Borrower's obligation to repay the Loan.

(t) "Property" has the meaning set forth in Paragraph C of the Recitals.

(u) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants, of even date herewith, between the County and the Borrower related to the Loan, to be recorded against the Property.

- (v) "Tenant" means a tenant that occupies a bed in the Property.
- (w) "Term" has the meaning set forth in Section 2.1.
- (x) "Transfer" has the meaning set forth in Section 3.12.

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 Acquisition Budget

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan and Loan Term.

The County shall lend to the Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note. The "Term" of the Loan is comprised of an Initial Term and, at County's option, an Extension Term. The "Initial Term" is twenty (20) years beginning on the date of this Agreement. At the end of the Initial Term, the County may agree to extend the term for an additional twenty (20) years (the "Extension Term") if (i) the Borrower is not in default under any of the Loan Documents, and (ii) the Borrower agrees to extend the term of the Regulatory Agreement for an additional twenty (20) years. Upon the commencement of the Extension Term, all references to the Term of the Loan will be deemed to mean the Term as extended pursuant to this Section.

Section 2.2 Interest.

The Loan does not bear interest, except that on the occurrence of any of the following events, Borrower shall pay the County interest in an amount equal to the Appreciated Value:

- (a) A change in the use of the Property that triggers the application of 24 CFR 570.503(b)(7)(ii);
- (b) Any Transfer; or
- (c) An Event of a Default.

Section 2.3 Use of Loan Funds.

- (a) The Borrower shall use the Loan to fund the acquisition of the Property consistent with the Approved Acquisition Budget.
- (b) The Borrower may not use the Loan proceeds for any other purposes without the prior written consent of the County.

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 causing or permitting the Deed of Trust to be recorded as a first position mortgage lien against the Property, superior in lien priority to the deed of trust securing the Harmony Loan.

Section 2.5 Subordination.

The County has approved the Harmony Loan as a loan junior in lien priority to the County Loan. The Harmony Loan has a term of ten (10) years and is expected to be refinanced prior to the expiration of its term by a new loan to Borrower from a private bank or other institutional lender. The Deed of Trust and/or Regulatory Agreement may be subordinated to a new mortgage loan that refinances the Harmony Loan (such loan, a "Senior Loan"), if all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Loan, less any transaction costs, are used to provide acquisition, rehabilitation and/or permanent financing for the Property.

(b) The holder of the proposed Senior Loan (the "Senior Lender") is a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(c) Borrower demonstrates to the County's reasonable satisfaction that subordination of the Deed of Trust and/or the Regulatory Agreement is necessary to secure refinancing of the Harmony Loan and, if necessary, financing for the rehabilitation of the Property, to ensure the viability of the Property, including the operation of the Property as a residential care facility, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide refinancing for the Harmony Loan and rehabilitation financing, if necessary to ensure the viability of the Property, and adequate financing for the Property would not be available without the proposed subordination.

(d) The subordination agreement is structured to minimize the risk that the Deed of Trust and the Regulatory Agreement will be extinguished as a result of a foreclosure by the Senior Lender. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including: (i) 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 (ii) providing the County with a cure period of at least sixty (60) days to cure any default.

(e) The subordination of the Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County.

(f) The subordination does not limit the effect of the Deed of Trust and the Regulatory Agreement before a foreclosure, nor require the consent of the Senior Lender prior to the County exercising any remedies available to the County under the Loan Documents.

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.

Section 2.6 Conditions Precedent to Loan Closing and Property Acquisition.

The County is not obligated to finalize the Loan or take any other action under the Loan Documents unless the following conditions precedent are satisfied, at which time the Loan will be deemed to be disbursed:

(a) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;

(b) The Borrower holds title to the Property or is acquiring title simultaneously with the disbursement of the Loan proceeds;

(c) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

(d) Borrower has delivered to the County a copy of a corporate resolution authorizing Borrower's execution of the Loan Documents;

(e) Borrower has caused to be executed and delivered to the County the Loan Documents and any other instruments and policies required under the Loan Documents;

(f) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing a CLTA 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;

(g) The Deed of Trust and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of Contra Costa;

(h) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 3.13 below.

(i) Borrower has closed the Harmony Loan, or is closing it simultaneously with the Loan.

Section 2.7 Repayment.

(a) Initial Term. Provided the Term of the Loan has not been extended beyond the Initial Term in accordance with Section 2.1, Borrower shall pay County the principal amount of the Loan in full on December 7, 2030.

(b) Extension Term. If the Term of the Loan is extended beyond the Initial Term in accordance with Section 2.1, the Loan will be forgiven at the end of the Extension Term, provided Borrower is not in default under any of the Loan Documents on the last day of the Extension Term.

(c) Repayment with Interest. Borrower shall pay the principal amount of the Loan in full, with interest calculated in accordance with Section 2.2, upon the occurrence of any of the events described in Section 2.2.

(d) Prepayment. Subject to the terms of Section 2.2., Borrower may prepay the Loan at any time without premium or penalty. Interest, if any, will be determined in accordance with Section 2.2. Notwithstanding any prepayment of the Loan, the Regulatory Agreement and the Deed of Trust will remain in effect for the entire Term.

Section 2.8 Non-Recourse.

Except as provided below, neither the Borrower, nor any partner of the Borrower, has 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, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of 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 to repay 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 3.5, 3.6 and 6.4 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 LOAN REQUIREMENTS

### Section 3.1           Annual Operating Budget.

At the beginning of each year of the Term, Borrower shall provide to the County an annual budget for the operation of the Property. Unless rejected by the County in writing within fifteen (15) days after receipt of the budget, the budget will 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 will continue to apply until such budget has been approved by the County.

### Section 3.2           Information.

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

### Section 3.3           Records.

(a)       The Borrower shall keep and maintain at the Property, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Property. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement are to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and are to be consistent with requirements of this Agreement. All such books, records, and accounts are to 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 are to be open for inspection by the County at all reasonable times 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. 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 the records until such action and all related issues are resolved. The records are to include all invoices, receipts, and other documents related to expenditures from the Loan funds. Borrower shall cause records to be 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. 574.450 and 24 C.F.R. 574.530. Such records are to include but are not limited to:

(i)       Records providing a full description of the activities undertaken with the use of the Loan;

(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 affordability and income requirements for Tenants;
- (iv) Records required to determine the eligibility of activities;
- (v) Records documenting compliance with the fair housing and equal opportunity requirements, as applicable;
- (vi) Financial records and other documents necessary to document compliance with the requirements of 24 C.F.R. Part 574 et. seq. and by OMB Circular A-110 (24 C.F.R. Part 84);
- (vii) Other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570; and

(b) The County will notify Borrower of any records it deems insufficient. Borrower has 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 must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### Section 3.4 County Audits.

Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which is to include information on all of Borrower's activities and not just those pertaining to the Property. In addition, the County or any designated agent or employee of the County at any time is entitled to audit all of Borrower's books, records, and accounts pertaining thereto. Such audit is to 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 will deliver a copy of the results of such audit to Borrower.

#### Section 3.5 CDBG Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the Loan funds as set forth in 24 C.F.R. Part 570, including but not limited to the requirements of the Regulatory Agreement. 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 govern.

(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. Part 58, 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. Part 100; 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 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608.

(v) Lead-Based Paint. If applicable, 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. Part 35.

(vi) Relocation. If applicable, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and state relocation laws. If and to the extent that operation or rehabilitation of the Property 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 is 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 that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced from the Property.

(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. Part 1500, as amended from time to time.

(ix) Uniform Administrative Requirements - CDBG. If applicable, the requirements of 24 C.F.R. 570.502 regarding cost and auditing requirements.

(x) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), 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 that are located in, or owned in substantial part by persons residing in, the areas of the project. 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. 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. Part 135, 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; will 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. Part 135, 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. Part 135. 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. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 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. 450e) 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).

(xi) Labor Standards. If applicable, the Borrower shall comply with prevailing wage requirements of the Davis-Bacon Act 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 – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 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.

(xii) 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.

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

(xiv) Historic Preservation. The Borrower shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800.

(xv) Flood Disaster Protection. This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act. Any contract or Agreement for the sale, lease, or other transfer of land acquired, cleared or

improved with assistance provided under this Agreement is to contain certain provisions. These provisions will apply if such land is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq. These provisions obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions are required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement

(xvi) Religious Organizations. If Borrower is a religious organization, as defined by the CDBG requirements, Borrower shall comply with all conditions prescribed by HUD for the use of CDBG 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. Section 570.200(j).

(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 3.6 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and may 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 may 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 Property 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, Section 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 has 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: (i) all foreseeable consequential damages, (ii) 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 (iii) all reasonable costs and expenses incurred by the County in connection with clauses (i) and (ii), 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 will survive termination of this Agreement.

(d) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may 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 is not 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 will 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, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

### Section 3.7 Maintenance and Damage.

(a) Borrower shall maintain 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 may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) 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 is to 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 or thirty (30) days following receipt of the insurance proceeds, and is to be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such

repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance proceeds collected for such damage or destruction are to be promptly delivered by the Borrower to the County as a special repayment of the Loan, subject to the rights of the Senior Lenders, if any.

Section 3.8 Fees and Taxes.

Borrower is 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, and shall pay such charges prior to delinquency. However, Borrower is not 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 3.9 Notice of Litigation.

Borrower shall promptly notify the County in writing of any litigation that 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 3.10 Operation of the Property.

(a) The Borrower shall operate the Property as a licensed residential care facility for lower income tenants with disabilities consistent with (i) HUD's requirements for use of the CDBG Funds and (ii) the Regulatory Agreement.

(b) Information documenting the maximum household income of a tenant occupying the Property, and the total charges for rent, utilities, and related services to each tenant occupying the Property, is to be maintained as provided in the Regulatory Agreement.

Section 3.11 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, familial status, 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 may 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 will run with the land.



Section 3.12 Transfer.

(a) For purposes of this Agreement, "Transfer" means 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 Property, 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 Property is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single room in the Property to an occupant in compliance with the Regulatory Agreement.

(b) No Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County approves the granting of a security interest in the Property in connection with the Harmony Loan.

Section 3.13 Insurance Requirements.

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

(i) 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.

(ii) 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.

(iii) 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.

(iv) Property insurance covering the Property, 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 must be obtained if required by applicable federal regulations.

(b) The Borrower shall cause any general contractor, agent, or subcontractor working on the Property under direct contract with the Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for comprehensive general liability insurance for

subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) 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 must be three times the occurrence limits specified above.

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

(e) All policies and bonds are to contain (i) 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; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) 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 (iv) 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 3.14 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.

Section 3.15 Payment of Other Indebtedness; Notice of Default

(a) Borrower shall promptly pay the principal and interest when due on any other indebtedness related to the Property.

(b) Borrower shall promptly notify the County in writing of any defaults declared under any other financing for the Property by the lender of such financing.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 4.1 Representation and Warranties.

Borrower hereby represents and warrants to the County as follows:

(a) Organization. Borrower is duly organized, 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 operation of the Property complies 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 Property, 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 Property 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, the deed of trust securing the Harmony Loan, 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 thereof. As of the date of this Agreement, there has not been any material adverse 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.

(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 5 DEFAULT AND REMEDIES

### Section 5.1 Events of Default.

Each of the following events constitutes an "Event of Default" by Borrower under this Agreement:

(a) Failure to Make Payment. Failure to repay the principal and any interest on the Loan when payment is due pursuant to the Loan Documents.

(b) 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 continues uncured for thirty (30) days after receipt of written notice thereof from the County to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower may 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 5, the specific provisions will control.

(c) Default Under Other Loans. A default is declared under any other financing for the Property by the lender of such financing.

(d) Insolvency. A court having jurisdiction makes or enters any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower 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, in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower admits in writing its inability to pay its debts as they fall due or will 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 will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(e) Assignment; Attachment. Borrower assign its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is 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.

(f) Suspension; Termination. Borrower voluntarily suspends its business or, the partnership is dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(g) Liens on the Property. Any claim of lien (other than the lien of the deed of trust securing the Harmony Loan or liens approved in writing by the County) is filed against the Property 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.

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

(i) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.12.

(j) 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, proves to have been incorrect in any material respect when made.

#### Section 5.2 Remedies.

The occurrence of any Event of Default hereunder following the expiration of all applicable notice and cure periods will relieve the County of any obligation to make or continue the Loan and will 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 may cause all indebtedness of the Borrower to the County under this Agreement and the Note, together with any 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 is 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 has 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) Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower shall 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 ten

percent (10%) or the maximum rate permitted by law, from the date of expenditure until the date of reimbursement.

Section 5.3 Right of Contest.

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

Section 5.4 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 will 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 will operate as a waiver thereof, nor does 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 6 GENERAL PROVISIONS

Section 6.1 Relationship of Parties.

Nothing contained in this Agreement is to 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 will at all times be deemed an independent contractor and to 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 Property, Borrower is 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 must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 6.2 No Claims.

Nothing contained in this Agreement creates or justifies 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 Property, and Borrower shall include similar requirements in any contracts entered into for the rehabilitation or operation of the Property.

Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement is 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 Property is revised, requiring conforming amendments to the Loan Documents.

Section 6.4 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 and operation of the Property, 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 will survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 6.5 Non-Liability of County Officials, Employees and Agents.

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

Section 6.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 6.7 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 the operation or rehabilitation of the Property.

Section 6.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 6.8(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 6.8(a) is followed.



(b) The conflict of interest provisions of Section 6.8(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 California Government Code Section 1090 and the Political Reform Act, California 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, may 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 is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 6.9 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent 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  
Redevelopment Division  
2530 Arnold Drive, Suite 190  
Martinez, CA 94553  
Attention: Deputy Director – Redevelopment

Borrower: Future Colours Corp.  
1579 N. Mitchell Canyon Road  
Clayton, CA 94517  
Attn: Executive Director

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 will 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 6.10 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 6.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures 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 to bind Borrower and its successors and assigns in the Property for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 6.12 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 6.13 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 will 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 6.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party will not be deemed to be an Event of 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 is the County required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 6.15 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.

Section 6.16 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 does 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 may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 6.17 Title of Parts and Sections.

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

Section 6.18 Entire Agreement of the Parties.

This Agreement, the Note, the Regulatory Agreement and the Deed of Trust constitute the entire agreement of the Parties with respect to the Loan.

Section 6.19 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.

*Remainder of Page Intentionally Left Blank*

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:

SHARON L. ANDERSON  
County Counsel

BORROWER:

FUTURE COLOURS CORP., a California nonprofit public benefit corporation

By: Kathleen M. Andrus  
Kathleen Andrus  
Deputy County Counsel

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

APPROVED ACQUISITION BUDGET

CDBG LOAN AGREEMENT

by and between

THE COUNTY OF CONTRA COSTA

and

FUTURE COLOURS CORP.

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