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**BORROWER LOAN AGREEMENT**

**by and between the**

**COUNTY OF CONTRA COSTA, CALIFORNIA,  
as Governmental Lender**

**and**

**BERRELLESA PALMS, L.P.,  
A CALIFORNIA LIMITED PARTNERSHIP,  
as Borrower**

**dated as of December 1, 2012**

**relating to:**

**\$14,500,000**

**Funding Loan originated by BANK OF THE WEST, as Funding Lender  
from the proceeds of the**

**\$\_\_\_\_\_**

**County of Contra Costa**

**Multifamily Housing Revenue Construction/Permanent Note,  
Series 2012B (Berrellesa Palms) and**

**\$\_\_\_\_\_**

**County of Contra Costa**

**Multifamily Housing Revenue Construction Note,  
Series 2012B (Berrellesa Palms)**

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The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain Unassigned Rights, as described herein) has been pledged and assigned to Bank of the West, as funding lender (the "Funding Lender"), under that certain Funding Loan Agreement, of even date herewith, by and between the County of Contra Costa, California (the "Governmental Lender") and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental

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## **BORROWER LOAN AGREEMENT**

THIS BORROWER LOAN AGREEMENT (this "Borrower Loan Agreement") is entered into as of the first day of December, 2012, between the COUNTY OF CONTRA COSTA, CALIFORNIA, a political subdivision and body corporate and politic of the State of California (together with its successors and assigns, the "Governmental Lender") and BERRELLESA PALMS, L.P., a California limited partnership (together with its successors and assigns, the "Borrower").

### **RECITALS:**

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of the Act (as defined herein); and

WHEREAS, pursuant to Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of California (the "Act"), the Governmental Lender is authorized, among other things, (a) to make loans to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing to be occupied in part by persons meeting the income limits set forth in the Act; (b) to incur indebtedness that is a limited obligation of the Governmental Lender for the purpose of obtaining moneys to make such loans and provide such financing; and (c) to pledge the revenues and receipts to be received by the Governmental Lender from or in connection with such loans to borrowers, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender received in connection with such loans in order to secure the payment of the principal of, Prepayment Premium, if any, on and interest on such indebtedness of the Governmental Lender; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the "Borrower Loan") for the acquisition and construction of a 49 unit multifamily rental senior housing project to be located at 301 Buckley Street in Martinez, California, known or to be known as Berrellesa Palms (as more particularly defined herein, the "Project"); and

WHEREAS, the Borrower's repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Notes, as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, dated as of December 1, 2012 (the "Funding Loan Agreement"), between the Governmental Lender and Bank of the West (the "Funding Lender"), under which the Funding Lender will make a loan (the "Funding Loan") to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement by the Governmental Lender to the Borrower to finance the acquisition and construction of the Project; and

WHEREAS, the Borrower Loan is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (California) (as amended, restated and/or supplemented from time to time, the "Trust Deed"), dated as of December 1, 2012, for the benefit of the Governmental Lender, and assigned



by the Governmental Lender to the Funding Lender to secure the Funding Loan, which Trust Deed encumbers the Project, and the Borrower Loan will be advanced to the Borrower pursuant to this Borrower Loan Agreement.

### **AGREEMENT:**

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

### **ARTICLE I**

#### **DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

Section 1.1 Specific Definitions. For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Trust Deed or, if not defined in the Trust Deed, in the Funding Loan Agreement.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles as in effect from time to time ("GAAP").

(c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined, and (iv) the word "including" means "including but not limited to."

Section 1.2 Definitions. The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

"Act" has the meaning given such term in the second recital to this Borrower Loan Agreement.

"Additional Borrower Payments" shall mean, collectively, the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue

Payments; Payments In Default), Section 6.4 (Borrower Loan in Balance), and Section 8.34 (Expenses) of this Borrower Loan Agreement, and Section 10 of each of the Borrower Notes (Voluntary and Involuntary Prepayments).

"Agreement to Furnish Insurance" shall mean the Agreement to Furnish Insurance, dated as of \_\_\_\_\_, 2012, between the Borrower and the Funding Lender.

"Affiliate" has the meaning given such term in the Funding Loan Agreement.

"Architect" means KTGy, being the person or firm employed by Borrower to design and/or supervise the construction of the Project.

"Assignment of Agreements" means the Assignment of Agreements, Permits, Licenses and Approvals (Architectural, Engineering & Construction Contracts), dated as of December 1, 2012, by Borrower, with consents thereto executed by General Contractor and Architect.

"Authorized Borrower Representative" shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender and the Funding Lender and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

"Beneficiary Parties" shall mean, collectively, the Funding Lender and the Governmental Lender.

"Board of Supervisors" means the Board of Supervisors of the Governmental Lender.

"Borrower" shall have the meaning given such term in the first paragraph of this Borrower Loan Agreement.

"Borrower Construction Note" shall mean that certain County of Contra Costa Multifamily Construction Note (Berrellesa Palms), dated as of the Initial Closing Date, in the original maximum principal amount of \$\_\_\_\_\_, made by Borrower and payable to Governmental Lender, as endorsed and assigned without recourse by the Governmental Lender to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Borrower Construction/Permanent Note" shall mean that certain County of Contra Costa Multifamily Construction/Permanent Note (Berrellesa Palms) dated as of the Initial Closing Date in the original principal amount of \$\_\_\_\_\_ made by Borrower and payable to Governmental Lender, as endorsed and assigned without recourse by the Governmental Lender to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Borrower Controlling Entity" shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not for profit corporation, the shareholders thereof.

"Borrower Deferred Equity" shall mean the Equity Contributions to be made by the Equity Investor to Borrower pursuant to the Partnership Agreement other than Borrower Initial Equity, in accordance with the following schedule (subject to adjustment in accordance with the Partnership Agreement):

<u>Amount</u>	<u>Earliest Date</u>
---------------	----------------------

"Borrower Initial Equity" shall mean an initial installment of the Equity Contributions made to Borrower by the Equity Investor in an amount of at least \$[ ] to be made on or prior to the Initial Closing Date.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Notes.

"Borrower Loan Agreement" shall mean this Borrower Loan Agreement.

"Borrower Loan Amount" shall mean \$14,500,000, being the combined original maximum principal amount of the Borrower Notes.

"Borrower Loan Documents" shall mean this Borrower Loan Agreement, the Borrower Notes, the Trust Deed, the Environmental Indemnity, the Guaranty, the Replacement Reserve Agreement, the Regulatory Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

"Borrower Loan Fee" shall mean the fee to be paid to the Funding Lender in consideration for the Funding Lender's agreeing to make the Funding Loan and entering into the Funding Loan Agreement and this Borrower Loan Agreement, which fee shall not be subject to reduction or be refundable under any and all circumstances, and which fee is payable upon Recordation of the Trust Deed in an amount as agreed upon by the Funding Lender and the Borrower in a separate fee letter.

"Borrower Loan Payment Date" shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Notes, or (ii) any other date on which one or more of the Borrower Notes are prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

"Borrower Loan Payments" shall mean the regularly scheduled loan payments payable pursuant to the Borrower Notes.

"Borrower Loan Proceeds" shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Articles V and VI hereof.

"Borrower Note" or "Borrower Notes" shall mean, individually or collectively, as the context shall require, the Borrower Construction/Permanent Note and the Borrower Construction Note.

"Borrower Payment Obligations" shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

"Borrower's Equity" means \$[ ] which have been or shall be paid by or on behalf of the Borrower from sources other than proceeds of the Borrower Loan or of any other borrowing from any person.

"Borrower's Funds" means the initial sum of \$[ ] to be made available by Borrower in a form satisfactory to the Funding Lender prior to Recordation of the Trust Deed, for deposit and/or disbursement in the manner and for the purposes described in this Borrower Loan Agreement, and any additional such sums requested by the Funding Lender under the terms of this Borrower Loan Agreement.

"Borrower's Funds Account" means a special non-interest bearing account into which Borrower's Funds, when requested by Funding Lender, shall be deposited pending disbursement in the manner and for the purpose herein described. Borrower's Funds deposited in this account shall be disbursed before further proceeds of the Borrower Loan are disbursed.

"Borrower's Interest" means the rate or rates of interest to be paid to the Funding Lender in respect of the Borrower Loan as set forth in the Borrower Notes.

"Business Day" shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which federally insured depository institutions in the City of San Francisco, California, are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

"CC&R's" shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Property.

"Certified Invoice" shall mean a certified invoice for progress payments as customarily used by the Funding Lender, the form of which has been delivered by the Funding Lender and received by the Borrower concurrently with the execution hereof, or its equivalent acceptable to the Funding Lender.

"Change Orders" shall mean any amendments or modifications to the General Contract or any subcontract.

"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Initial Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Initial Closing Date, together with applicable Treasury Regulations.

"Collateral" shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Trust Deed, or (iii) any Security Agreements, which Collateral shall include the Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

"Completion Date" shall mean the date of required completion of construction of all of the Improvements and issuance of all licenses and permits necessary for the occupancy and use thereof, which is, as to all of the Improvements, December 1, 2014, subject to extension under the terms of EXHIBIT F of this Borrower Loan Agreement to a date not later than March 1, 2015.

"Completion Guarantor" shall mean the person(s) obligated on a Completion Guaranty, initially Resources for Community Development.

"Completion Guaranty" shall mean an agreement, executed and delivered by the Completion Guarantor, on the Funding Lender's form, guaranteeing completion of the Improvements.

"Computation Date" shall have the meaning given such term in Section 1.148-3(e) of the Treasury Regulations.

"Conditions to Conversion" shall have the meaning given such term in EXHIBIT F hereto.

"Construction Consultant" shall mean a third-party architect or engineer selected and retained by Funding Lender, at the cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

"Construction Contract" shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by Funding Lender.

"Construction Schedule" has the meaning given such term in Section 5.1.6 of this Borrower Loan Agreement.

"Contingency Draw-Down Agreement" shall mean the Contingency Draw-Down Agreement, dated as of December 1, 2012, between the Funding Lender and the Borrower relating to possible conversion of the Funding Loan from, in part, a draw down loan to a fully funded loan.

"Continuing Disclosure Agreement" shall mean that certain Continuing Disclosure Agreement dated as of December 1, 2012, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Initial Closing Date, as amended, supplemented or restated from time to time.

"Conversion" shall mean Funding Lender's determination that the Conditions to Conversion have been satisfied in accordance with the provisions of Article III of this Borrower Loan Agreement.

"Conversion Date" shall mean the date to be designated by Funding Lender once the Conditions to Conversion have been satisfied, the determination of the Permanent Period Amount has been made and any loan balancing payments in accordance with Article III hereof and EXHIBIT F hereto have been made, and which shall occur not later than the Outside Conversion Date.

"Cost Breakdown" shall mean an itemized schedule on a component, unit and trade breakdown basis covering all costs of constructing and completing the Improvements, to be submitted to and approved by the Funding Lender, with such subsequent changes as Borrower deems necessary or desirable and as are approved by the Funding Lender in writing pursuant to Section 8.28 or as otherwise determined by the Funding Lender. The initial Cost Breakdown is attached to this Borrower Loan Agreement as EXHIBIT B.

"Costs of Funding" shall mean the Governmental Lender's Closing Fee and all other fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower's counsel and Funding Lender's counsel); (ii) financial advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) printing costs (for any preliminary and final offering materials relating to the Funding Loan); (v) any recording fees; and (vi) costs incurred in connection with the required public notices generally and costs of the public hearing held by the Board of Supervisors of the Governmental Lender in connection with the Funding Loan.

"Costs of Funding Deposit" shall mean the amount required to be deposited by the Borrower with the Title Company to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Initial Closing Date.

"County" shall mean the County of Contra Costa, California.

"Cumulative Change Order Amount" shall mean \$\_\_\_\_\_.

"Date of Disbursement" shall mean the date of a Disbursement.

"Day" or "Days" shall mean calendar days unless expressly stated to be Business Days.

"Debt" shall mean, as to any Person, any of such Person's liabilities, including all indebtedness (whether recourse and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

"Default Interest" shall mean the rate of interest specified in each Borrower Note which shall be in effect with respect to the indebtedness evidenced by each Borrower Note upon the occurrence of an Event of Default.

"Determination of Taxability" shall mean (i) a determination by the Commissioner of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Notes issued by the National Office of the Internal Revenue Service in which Funding Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Notes is includable in gross income for federal income tax purposes of any owner or any former owner of all or a portion of the Governmental Lender Notes, other than an owner who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

"Developer Fee" shall mean the fees and/or compensation payable to Resources for Community Development pursuant to the Development Services Agreement dated as of December 1, 2012, between Borrower and such developer, which fees and/or compensation shall not be paid prior to the Conversion Date except as permitted pursuant to an approved developer fee schedule.

"Disbursement" means any disbursement of the proceeds of the Borrower Loan in accordance with the Disbursement Schedule.

"Disbursement Schedule" shall mean the schedule of disbursement of the proceeds of the Borrower Loan and of any Borrower's Equity or Borrower's Funds as set forth on EXHIBIT A attached hereto and by this reference made a part hereof.

"Environmental Indemnity" shall mean the Environmental Indemnity Agreement, dated as of December 1, 2012, by Borrower.

"Equity Contributions" shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Partnership Agreement.

"Equity Investor" shall mean Union Bank, N.A., a national banking association, and its permitted successors and assigns.

"Event of Default" shall mean any Event of Default set forth in Article IX of this Borrower Loan Agreement. An Event of Default shall "exist" if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expenses" shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a property management fee, costs of insurance, costs of social services, coordination fees and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

"Extended Outside Conversion Date" shall mean March 1, 2015.

"Extension Fee" shall mean the fee to be paid by Borrower for an extension (if any) of the Completion Date provided for in EXHIBIT F of this Borrower Loan Agreement, which fee shall not be subject to reduction or be refundable under any and all circumstances, and which extension fee is payable upon execution of the loan extension documents in an amount as agreed upon by the Funding Lender and Borrower in a separate fee letter.

"Financial Statements" shall mean financial statements of the Borrower and Guarantor and such other entity required by the Funding Lender including Operating Statements, Balance Sheet and such other financial reports that the Funding Lender may require.



"Fair Market Value" shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

"Funding Lender" shall mean Bank of the West, in its capacity as lender under the Funding Loan Agreement.

"Funding Loan" means the Funding Loan in the original maximum principal amount of \$14,500,000 made by Funding Lender to Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

"Funding Loan Agreement" means the Funding Loan Agreement, dated as of December 1, 2012, between the Governmental Lender and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Funding Loan Documents" shall have the meaning given to that term in the Funding Loan Agreement.

"GAAP" shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

"General Contract" shall mean the contract between Borrower and General Contractor for construction of the Improvements.

"General Contractor" shall mean Segue Construction, Inc.

"General Partner" shall mean, collectively, (i) 112 Alves Lane, Inc., a California nonprofit public benefit corporation, and/or (ii) any other Person that the partners of

the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender's approval pursuant to the Borrower Loan Documents), selected to be a general partner of the Borrower.

"Governmental Authority" shall mean the authority of the United States, the State or any political subdivision thereof, any city and any agency, department, commission, board, bureau or instrumentality of any of them.

"Governmental Lender" shall have the meaning set forth in the first paragraph of this Borrower Loan Agreement.

"Governmental Lender Notes" or "Governmental Lender Note" shall mean, collectively or individually, as the context shall require, the Governmental Lender Construction/Permanent Note and the Governmental Lender Construction Note.

"Governmental Lender Construction Note" shall mean that certain County of Contra Costa Multifamily Housing Revenue Construction Note, Series 2012B (Berrellesa Palms), dated the Initial Closing Date, in the original maximum principal amount \$\_\_\_\_\_, made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Governmental Lender Construction/Permanent Note" shall mean that certain County of Contra Costa Multifamily Housing Revenue Construction/Permanent Note, Series 2012B (Berrellesa Palms), dated the Initial Closing Date, in the original principal amount \$\_\_\_\_\_, made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Governmental Lender Fee" shall have the meaning given such term in the Funding Loan Agreement.

"Governmental Lender's Closing Fee" shall mean the fee of the Governmental Lender payable on Initial Closing Date in accordance with Section 4.A.(d)(i) of the Regulatory Agreement.

"Governmental Requirement" or "Local Requirement" shall mean any law, ordinance, order, rule or regulation of a Governmental Authority or Local Authority, respectively, including, but not limited to, the applicable general and specific plans, if any, and the zoning, subdivision, grading and building ordinances, any applicable tentative subdivision map and conditions of approval thereof, and any conditional use permits, planned development permit or plan and the conditions of approval thereof.

"Gross Income" shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan

proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law.

"Gross Proceeds" shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all Costs of Funding) of Funding Loan proceeds received by or on behalf of the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

"Guarantor" shall mean the Guarantor of obligations evidenced by the Borrower Notes, being Resources for Community Development.

"Guaranty" shall mean the guaranty, executed by the person or persons named herein as Guarantor which guarantees the performance of Borrower's obligations pursuant to the Borrower Notes and any other obligations referred to in such Guaranty.

"Improvements" shall mean the Site Improvements for the Property, and all other improvements comprising the Project.

"Initial Closing" shall mean the time of the execution and delivery hereof by Borrower and Governmental Lender.

"Initial Closing Date" shall mean December \_\_, 2012, being the date of the initial advance of Funding Loan under the Funding Loan Agreement, and of the Borrower Loan under this Borrower Loan Agreement.

"Initial Disbursement" shall mean the payment upon Recordation of the Trust Deed of costs, charges, expenses and items associated with the Borrower Loan, as set forth in Section 6.1 hereof.

"Indemnified Party" shall have the meaning set forth in Section 8.35 hereof.

"Installment Computation Date" shall mean any Computation Date other than the first Computation Date or the final Computation Date.

"Interest Rate" shall mean with respect to a Borrower Note the rate of interest accruing on such Borrower Note as provided therein.

"Late Charge" shall mean the amount due and payable as a late charge on overdue payments under the Borrower Notes, as provided in Section 7 of each Borrower Note and Sections 2.5(a)(v) and 2.6 hereof.

"Lease" shall mean a written agreement between Borrower, as landlord, and a Tenant concerning premises in the Project leased by such Tenant, which shall be in form and substance subject to the Funding Lender's approval.

"Legal Action" shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

"Legal Requirements" shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

"Liabilities" shall have the meaning set forth in Section 8.35 hereof.

"Lien" shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

"Local Authority" shall mean any Governmental Authority which exercises jurisdiction over the Property or construction thereon.

"Management Agreement" shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Manager" shall mean the John Stewart Company.

"Material Adverse Change" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations of the Borrower, General Partner, Guarantor or the Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

"Nonpurpose Investment" shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

"Note Proceeds Subaccount" shall mean the subaccount by that name created within the Borrower's Funds Account pursuant to Section 8.1 hereof.

"Obligor" shall mean Borrower, each Guarantor, each general partner of Borrower or Guarantor (if Borrower or such Guarantor is a partnership), and any guarantor, co-maker, endorser, or any person or entity other than Borrower providing security for the Borrower Notes.

"Outside Conversion Date" shall mean the date which is twenty-four (24) months after the Closing Date.

"Partnership Agreement" means that certain First Amended and Restated Limited Partnership Agreement of the Borrower dated as of December 1, 2012, as the same may be amended, restated or modified in accordance with its terms.

"Payment Obligations" shall mean all obligations of Borrower for the payment of money to the Governmental Lender or to any other person under the Borrower Notes, this Borrower Loan Agreement or under any other Borrower Loan Document.

"Permitted Lease" shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

"Permanent Period Amount" shall mean the amount of the Funding Loan determined in connection with Conversion pursuant to the provisions of EXHIBIT F attached hereto.

"Person" shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

"Personal Property" shall mean that property described in the Trust Deed or Security Agreements which is not Real Property and which is collateral for the Borrower Loan.

"Plans and Specifications" shall mean all of the plans and specifications for the construction of the Improvements (including the General Conditions set forth by the FHA, VA or American Institute of Architects whichever is appropriate or whichever is incorporated in the specifications or other General Conditions and any addenda thereto) for the construction of the Improvements prepared by Borrower's Architect, and approved as required herein and all amendments and modifications thereof made by approved Change Orders, including all architectural drawings and renderings, reports, engineering plans and specifications, reports and plans, surveys and any other instrument or document designated by the Funding Lender, all of which are subject to approval by the Funding Lender. (The Plans and Specifications listed in EXHIBIT C if any, have been approved by the Funding Lender prior to the Initial Closing).

"Potential Default" shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice of passage of time, be an Event of Default.

"Pre-Conversion Loan Equalization Payment" has the meaning given such term in Section 3.3(a) hereof.

"Prepayment Premium" shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Notes (including any Prepayment Premium as set forth in the related Borrower Note).

"Project" shall mean the acquisition and construction of a 49 unit multifamily rental housing project known as Berrellesa Palms, located in the City of Martinez, California, on the real property site described in Exhibit A to the Regulatory Agreement.

"Project Agreements and Licenses" shall mean any and all Construction Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Property.

"Project Costs" shall mean all costs of acquisition of the Property, if any, the design, development and construction of the Improvements, and related insurance,

carrying costs and financing costs of the Project incurred during the term of this Borrower Loan Agreement.

"Property" or "Real Property" shall mean that certain real property located in the City of Martinez, a legal description of which is attached to or is otherwise incorporated in the Trust Deed and the Regulatory Agreement, and on which the Improvements are to be constructed.

"Provided Information" shall have the meaning set forth in Section 14A.1.1 (a) hereof.

"Qualified Project Costs" shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Treasury Regulations, provided, however, that only such portion of the interest accrued during construction of the Project shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed by an Affiliate of the Borrower (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing the Project (or any portion thereof), and (B) any overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an "affiliated group" (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to May 8, 2012, being the date on which the Board of Supervisors of the Governmental Lender adopted Resolution No. 2012/196 declaring the Governmental Lender's "official intent" to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Treasury Regulations), and (iv) if the costs of the acquisition and construction of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) "preliminary expenditures" (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction of the Project that do not exceed twenty percent (20%) of the issue price of the Funding Loan (as defined in Section 1.148-1 of the Treasury Regulations), or (C) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (y) Costs of Funding are not Qualified Project Costs, and (z) fees, charges or profits (including, without limitation, developer

fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not Qualified Project Costs.

"Rebate Amount" shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

"Rebate Analyst" shall mean the rebate analyst selected by the Borrower prior to the Initial Closing Date and acceptable to the Governmental Lender and the Funding Lender. The initial Rebate Analyst shall be [\_\_\_\_\_].

"Rebate Analyst's Fee" shall mean the annual fee of the Rebate Analyst in the amount of \$\_\_\_\_\_. The Rebate Analyst's Fee is payable by the Borrower to the Rebate Analyst, commencing \_\_\_\_\_, 20\_\_, every fifth anniversary thereof, and the Maturity Date.

"Rebate Fund" shall mean the Rebate Fund created pursuant to Section 5.34 hereof.

"Recordation" shall mean the act of recording the Trust Deed or other applicable document in the official records of the County.

"Regulatory Agreement" has the meaning given such term in the Funding Agreement.

"Replacement Reserve Agreement" [shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.]

"Replacement Reserve Fund Requirement" means \$750,000.

"Retainage" shall mean, for each Construction Contract, the greater of (a) ten percent (10%) of all amounts required to be paid by a Contractor under the Construction Contract (but excluding any amounts paid for lumber, appliances and bonds and insurance) and (b) the actual retainage required under such Construction Contract, which shall be released upon satisfaction of the conditions set forth in Section 3.13 of the Construction Funding Agreement.

"Secondary Market Disclosure Document" shall have the meaning set forth in Section 14A.1.2 hereof.

"Secondary Market Transaction" shall have the meaning set forth in Section 14A.1.1 hereof.

"Securities" shall have the meaning set forth in Section 14A.1.1 hereof.

"Securities Act" shall mean the Securities Act of 1933, as amended.



"Security Agreements" shall mean any agreements, other than the Trust Deed, securing the Borrower Loan, the Borrower's performance hereunder and interest, costs and charges associated therewith (including but not limited to any assignments of contracts and rights which may be required under this Borrower Loan Agreement).

"Set Aside Letters" shall mean (a) a letter from the Funding Lender to a surety setting forth the Funding Lender's undertaking to fund Project Costs for construction of improvements to be bonded by the surety in connection with the Borrower's development of the Project, or (b) a letter from the Funding Lender to a Governmental Authority setting forth the Funding Lender's undertaking to fund Project Costs for construction of improvements in connection with the Borrower's development of the Project.

"Set Aside Letter Fee" shall mean a nonrefundable fee paid by Borrower as a condition to the issuance of a Set Aside Letter, which shall equal \_\_\_ percent (\_\_\_%) of the amount of the Set Aside Letter.

"Site Improvements" shall mean the work of grading the Property and installation of utilities, streets, sidewalks, if any, and other improvements for the Property.

"Special Tax" shall mean, as to any property (a) any special assessment or other tax which is or may become a lien affecting such property, other than general ad valorem real property taxes, and (b) any assessment, improvement, community facilities or other special taxing district in or into which such property is or may be located or incorporated or under which any special assessment or other tax which is or may become a lien affecting such property is or may be imposed.

"Standard & Poor's" or "S&P" shall mean Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business division, and its successors.

"State" shall mean the State of California.

"Subordinate Debt" shall mean the subordinate loans to Borrower being made by Subordinate Lender pursuant to the Subordinate Loan Documents, as set forth in EXHIBIT E hereto.

"Subordinate Lender" shall mean the lenders identified in EXHIBIT E hereto.

"Subordinate Loan Documents" shall mean, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

"Substantially Complete" or "Substantially Completed" means the Funding Lender has determined that construction or rehabilitation, as the case may be, of the

Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project.

"Substantial Completion Date" means the date that is three (3) months prior to the Completion Date.

"Tax Certificate" has the meaning given to such term in the Funding Loan Agreement.

"Tax Counsel" shall have the meaning given such term in the Funding Loan Agreement.

"Tenant" shall mean an occupant or intended occupant of the Project pursuant to a Lease.

"Title Insurer" shall mean North American Title Insurance Company, as issuer of the Title Policy in connection with the Initial Closing Date.

"Title Policy" shall mean the Funding Lender's title insurance policy for the Trust Deed, with all endorsements required to be issued by Title Insurer under Section 8.3 hereof.

"Transfer" shall have the meaning given to that term in the Security Instrument.

"Treasury Regulations" has the meaning given such term in the Funding Loan Agreement.

"Trust Deed" shall mean the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California), dated as of December 1, 2012, encumbering the Project and made by the Borrower in favor of the Governmental Lender, as assigned by the Governmental Lender to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan and the Governmental Lender Notes. The Trust Deed is referred to in the Funding Loan Agreement as the "Security Instrument."

"Unassigned Rights" has the meaning given to such term in the Funding Loan Agreement.

"Written Consent" and "Written Notice" shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## ARTICLE II

### GENERAL

Section 2.1 Origination of Borrower Loan. In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Act, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender under and subject to the terms of the Funding Loan Agreement. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Borrower in accordance with the terms of this Borrower Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse the Borrower Loan for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan (other than the Unassigned Rights), and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement, other than with respect to the Unassigned Rights, shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate a servicer to fulfill the rights and responsibilities granted by Government Lender to Funding Lender pursuant to this Section 2.1.

### Section 2.2 Security for the Funding Loan.

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender under and pursuant to the Funding Loan Agreement (a) the Borrower Notes and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Trust Deed) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Notes, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) Tax Covenants. Seek specific performance of, and enforce, the provisions of Section 8.7 of the Funding Loan Agreement, the Tax Certificate and Section 8.51 of this Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of such provisions, and enforce the Borrower's obligations under Section 8.52 of this Borrower Loan Agreement (including the obligation to pay amounts for credit to the Rebate Fund);

(ii) Regulatory Agreement. Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues (as defined in Section 2.2(e) below), if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute an action to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Funding Lender of any of its rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or upon the occurrence of an event of default under the Funding Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

(d) The Governmental Lender shall provide Written Notice to the Funding Lender immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

(e) As used in this Section 2.2, the term "Excess Revenues" means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the

Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts in each case which the Borrower is required to set aside pursuant to the Borrower Loan Documents or agreements with parties that are not Affiliates of the Borrower, but excluding depreciation and amortization of intangibles.

Section 2.3 Borrower Loan; Borrower Notes; Conditions to Closing.

(a) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Notes. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Notes.

(b) Closing of the Borrower Loan on the Initial Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender, each in its sole discretion, of each of the conditions precedent to closing set forth in this Borrower Loan Agreement, including but not limited to the following:

(i) evidence of Recordation of the Trust Deed, an assignment of the Trust Deed from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender on the Initial Closing Date (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender and Governmental Lender); and

(ii) delivery into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender) (and/or as specified in the closing memorandum of the Funding Lender); and

(iii) payment of all fees payable in connection with the closing of the Borrower Loan, including the Governmental Lender's Closing Fee.

In addition, closing of the Borrower Loan shall be subject to the delivery of a Tax Counsel Approving Opinion, dated as of the Initial Closing Date, addressed to the Governmental Lender (with a reliance letter to the Funding Lender, and an opinion of counsel to the Borrower addressed to the Governmental Lender, dated the Initial Closing Date, in form and substance acceptable to the Governmental Lender.

(c) Subject to the conditions set forth in Articles V and VI and elsewhere in this Borrower Loan Agreement, the Funding Loan shall be funded directly to the Borrower by the Funding Lender through this Borrower Loan Agreement, in one or more installments not to exceed the Borrower Loan Amount in accordance with the disbursement procedures set forth in this Borrower Loan Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. Borrower Loan advances and Funding Loan advances shall be allocated first to the Borrower Construction/Permanent Note and the related Governmental Lender Construction/Permanent Note, and once the foregoing Borrower Note has been fully funded, to the Borrower Construction Note and the related Governmental Lender Construction Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Notes. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition and construction of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender for the account of the Governmental Lender.

Section 2.4 Borrower Loan Payments. The Borrower shall make Borrower Loan Payments in accordance with the Borrower Notes. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Funding Lender by 2:00 p.m., San Francisco time, on the Borrower Loan Payment Date. Each such payment shall be made to the Funding Lender by deposit to such account as the Funding Lender, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Notes in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

Section 2.5 Additional Borrower Payments.

(a) The Borrower shall pay on demand the following amounts:

(i) to the Funding Lender, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 8.52 hereof and the Rebate Analysts' Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Governmental Lender, the Governmental Lender Fee and all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred by the Governmental Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, counsel fees and expenses incurred in connection with the interpretation, performance, or amendment of the Borrower Loan Documents or the Funding Loan Documents, and

counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan, or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(iii) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(iv) to the Funding Lender, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment, and all counsel fees and expenses relating to the enforcement of, the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

(v) any Late Charge due and payable under the terms of the Borrower Notes and Section 2.6 hereof.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender or the Funding Lender;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender or the Funding Lender, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

Section 2.6 Overdue Payments; Payments In Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender, a Late Charge in the amount and to the extent set forth in the Borrower Notes, if any.

Section 2.7 Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Trust Deed and as security for payment of the Borrower Payment

Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the Funding Lender for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default following expiration of applicable notice and cure periods, the Funding Lender shall apply or cause to be applied any sums held by the Funding Lender with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

Section 2.8 Marshalling; Payments Set Aside. The Governmental Lender and Funding Lender shall be under no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Funding Lender, or the Governmental Lender or Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender or Funding Lender and any and all remedies available to the Governmental Lender or Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender and Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender or Funding Lender in connection with the exercise by the Governmental Lender or Funding Lender of its rights under this Section 2.8.

### ARTICLE III

#### CONVERSION

Section 3.1 Conversion Date and Extension of Outside Conversion Date. Borrower shall satisfy each of the Conditions to Conversion to occur and cause the Conversion Date to occur on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any), as further provided in this Borrower Loan Agreement. The failure to satisfy each of the Conditions to Conversion on or before the Outside Conversion Date shall constitute an Event of Default under the Borrower Loan Documents.



Section 3.2 Notice From Funding Lender; Funding Lender's Calculation Final.

(a) Following satisfaction of all of the Conditions to Conversion, Funding Lender shall deliver Written Notice to Borrower of: (i) the Conversion Date, (ii) the amount of the Permanent Period Amount, (iii) any required prepayment of the Borrower Notes (as described below in Section 3.3) and (iv) any amendments to the amortization schedule, as applicable.

(b) Funding Lender's calculation of the Permanent Period Amount and any amendments to the amortization of the Borrower Loan shall be, in the absence of manifest error, conclusive and binding on all parties.

Section 3.3 Mandatory Prepayment of the Borrower Loan.

(a) As further provided in this Borrower Loan Agreement, if and to the extent the Permanent Period Amount is less than the outstanding amount of the Funding Loan as of the Conversion Date, Funding Lender may in its sole discretion require Borrower to make a partial prepayment of the Borrower Loan in an amount equal to the difference between the outstanding principal amount of the Funding Loan as of the Conversion Date and the Permanent Period Amount (a "Pre-Conversion Loan Equalization Payment").

(b) Any prepayment in full or in part of the Borrower Loan required pursuant to Section 3.3(a) above shall be subject to a Prepayment Premium under certain circumstances as more particularly set forth in the Borrower Notes.

Section 3.4 Release of Remaining Loan Proceeds. If and to the extent that the Permanent Period Amount is greater than the principal amount of the Borrower Loan which has previously been disbursed to Borrower, Funding Lender shall deliver Written Notice thereof to Borrower on or before the Conversion Date. Within ten (10) business days after delivery of such notice, but in no event later than the Outside Conversion Date (or, if applicable, the Extended Outside Conversion Date), Funding Lender shall disburse Borrower Loan proceeds to Borrower so that the aggregate principal amount of the Borrower Loan disbursed equals the Permanent Period Amount. Any Borrower Loan proceeds previously disbursed to the Borrower in excess of the Permanent Period Amount shall be paid by Borrower to Funding Lender.

Section 3.5 No Amendment. Nothing contained in this Article III shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Borrower Notes, Trust Deed, this Borrower Loan Agreement or any other Borrower Loan Document and, if there shall exist a conflict between the terms and provisions of this Article III and those of the Borrower Notes, Trust Deed, this Borrower Loan Agreement or other Borrower Loan Documents, then the terms and provisions of the Borrower Notes, Trust Deed, this Borrower Loan Agreement and other Borrower Loan Documents shall control, provided, however, that in the event of a conflict between the terms and provisions of this Article III and those of the Borrower's loan application with the Funding Lender, the terms and provisions of this Article III shall control.

Section 3.6 Determinations by Funding Lender. In any instance where the consent or approval of Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Article III, including in connection with this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender (or its designated representative), at its sole and exclusive option and in its sole and absolute discretion.

## ARTICLE IV

### CONDITIONS PRECEDENT TO RECORDATION

Prior to Recordation of the Trust Deed the following conditions shall have been satisfied:

Section 4.1 Borrower Loan Documents. Funding Lender shall have received:

4.1.1 the executed Borrower Notes;

4.1.2 the executed Trust Deed;

4.1.3 [intentionally omitted];

4.1.4 the executed letter regarding authorized signatures, from Borrower;

4.1.5 the executed Environmental Indemnity;

4.1.6 each Guaranty duly executed by the Guarantor(s);

4.1.7 each Completion Guaranty duly executed by each Completion Guarantor or such other or additional persons as may be required by Funding Lender; and

4.1.8 a UCC-1 Financing Statement naming Borrower as "debtor" and Funding Lender as "secured party".

4.1.9 the executed Agreement to Furnish Insurance;

4.1.10 the executed Assignment of Agreements;

4.1.11 a Consent to Assignment of Assignment of Agreements, Permits, Licenses and Approvals, duly executed by each of the General Contractor and the Architect;

4.1.12 an executed authorization to obtain credit (Borrower);

4.1.13 the executed Funding Loan Agreement;

4.1.14 an executed fee letter;

- 4.1.15 the executed Contingency Draw-Down Agreement;
- 4.1.16 the executed Continuing Disclosure Agreement;
- 4.1.17 executed title and closing instructions;
- 4.1.18 an executed assignment of deed of trust and loan documents;
- 4.1.19 an executed assignment of development fee;
- 4.1.20 an executed assignment of rights under housing assistance payments contract;
- 4.1.21 an executed assignment of rights under management agreement;
- 4.1.22 a subordination agreement duly executed by the Borrower, the Funding Lender and the Governmental Lender;
- 4.1.23 an assignment of deposit account; and
- 4.1.24 UCC financing statements.

Section 4.2 Due Diligence Items. Funding Lender shall also have received:

- 4.2.1 original insurance policies or certificates thereof for the insurance required by Section 8.13 hereof;
- 4.2.2 a preliminary title report issued by Title Insurer showing the condition of title to the Property with the Property's legal description and a copy of all documents listed as exceptions to said title report;
- 4.2.3 all Borrower's Funds required;
- 4.2.4 if requested by Funding Lender, a current survey of the Property including dimensions, delineations and locations of all easements thereon, certified to Funding Lender in form and substance acceptable to Funding Lender, and satisfactory to the Title Insurer if required by it;
- 4.2.5 if requested by Funding Lender, a performance bond naming Funding Lender as co-obligee, and labor and material payment bond, in a penal sum equal to the amount of the General Contract, or if none, then in such amounts as Funding Lender may require, in form and content and with corporate sureties meeting the statutory requirements of the state in which the Property is situated, and otherwise satisfactory to Funding Lender;
- 4.2.6 an Opinion of Counsel from Borrower's counsel as to the legality of the matters set forth in Sections 7.1, 7.2, 7.3, 7.6, 7.7, 7.12, 7.15, 7.16 and 7.19 hereof;

4.2.7 if Borrower is a corporation, a certificate of good standing and (if applicable), qualification to do business, together with:

(a) if the Borrower is a corporation, its articles of incorporation and all amendments thereof; and

(b) a certified Resolution of Borrower Controlling Entity authorizing the consummation of the transactions on the part of the Borrower contemplated hereby and providing for the execution of a written direction of payment if Borrower Loan proceeds are to be paid to a person other than Borrower;

4.2.8 if Borrower is a Joint Venture, the Joint Venture Agreement and recorded Statement of Joint Venture, including all amendments;

4.2.9 if Borrower is a General Partnership, the Partnership Agreement and the filed and/or recorded Statement of General Partnership (GP-1), including all amendments;

4.2.10 if Borrower is a Limited Partnership, a certificate of status issued by the appropriate Governmental Authority, together with the Limited Partnership Agreement and the filed and/or recorded Certificate of Limited Partnership (LP-1), including all amendments;

4.2.11 if Borrower is a Limited Liability Partnership, a certificate of status issued by the appropriate Governmental Authority, together with the Partnership Agreement and the filed and/or recorded Certificate of Limited Liability Partnership (LLP-1), including all amendments;

4.2.12 if Borrower is a Limited Liability Company, a certificate of status issued by the appropriate Governmental Authority, together with the filed and/or recorded Articles of Organization (LLC-1) and the Operating Agreement and Management Agreement (if applicable), including all amendments;

4.2.13 if Borrower is a trust, a copy of the relevant portions of the declaration of trust or a trustee's certificate of trust executed pursuant to California Probate Code Section 18100.5 in form and substance satisfactory to Funding Lender;

4.2.14 for any Guarantor or Completion Guarantor which is not a natural person, the equivalent documents which would be required for such an entity as Borrower under Section 4.2.6 through 4.2.13 hereof, as applicable;

4.2.15 the Intercreditor and Subordination Agreement, dated as of December 1, 2012, among the Governmental Lender, the Borrower and the Funding Lender with respect to the Junior Loan, as defined therein;

4.2.16 an opinion of local counsel selected by Borrower and satisfactory to Funding Lender to the effect that (i) upon due authorization and execution by the parties thereto and upon such recording or filing thereof as may be specified in the opinion, the Borrower Notes, Trust Deed, this Borrower Loan Agreement, the Guaranty, the Environmental Indemnity and the Completion Guaranty will be legal, valid and binding instruments, enforceable against the

makers thereof in accordance with their respective terms; (ii) the Trust Deed creates the lien it purports to create on the Property, and effectively assigns the leases purported to be assigned thereby, and stating the manner of recording or filing to be effected in order to establish, preserve and protect the Funding Lender's interest therein, and whether there is any necessity for the re-recording or re-filing of such instruments and setting forth such re-recording or re-filing requirements, if any; (iii) Funding Lender, by making and administering the Borrower Loan, (a) shall not be deemed to be doing business in the state in which the Property is located or, if the making of the Funding Loan constitutes doing business in that state, that the Funding Lender has been duly qualified to do business in that state, (b) shall not become subject to the payment of any income, franchise, capital or other similar taxes or assessments with respect to its ownership of the note or the receipt of principal or interest thereunder other than customary corporate income taxes on the interest received thereon, and (c) shall not be violating the usury laws of that state; and (iv) as to such other matters incident to the transactions contemplated hereby, as Funding Lender may require;

4.2.17 if requested by Funding Lender, a copy of the applicable general and specific plans, if any, and the zoning, subdivision, grading and building ordinances, the applicable tentative subdivision map and conditions of approval thereof, and any conditional use permit or planned development permit or plan and the conditions of approval thereof, each certified by an appropriate official to be true, complete and up to date;

4.2.18 the Plans and Specifications for the Site Improvements;

4.2.19 copies of letters from local utility companies or Local Authority stating that electric, gas, sewer, water and telephone facilities will be available to the Property upon completion of the Improvements;

4.2.20 copies of all applicable easements, covenants, conditions and restrictions, and other agreements pertaining to operation or development of the Property; and

4.2.21 if Borrower is organized under the laws of a jurisdiction other than that in which the Property is located, original certificates of qualification to do business issued by the applicable Governmental Authority for the State in which the Property is located.

## ARTICLE V

### CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1 Initial Disbursement Conditions. Prior to the Initial Disbursement the following conditions shall have been satisfied, in addition to those in Article IV:

5.1.1 Recordation of the Trust Deed and the Regulatory Agreement shall have occurred.

5.1.2 Title Insurer shall have issued or agreed to issue the Title Policy described in Section 8.3 hereof, naming Funding Lender as insured to the extent of the Borrower Loan amount.

5.1.3 Where required by Funding Lender, UCC-1 Financing Statements shall have been filed with the Secretary of State for the state where the Borrower is organized, describing the Personal Property.

5.1.4 Funding Lender shall have been furnished with a certificate issued by the filing officer of the Secretary of State for the state where Borrower is organized, showing Funding Lender's UCC-1 Financing Statement as prior to all other UCC-1 Financing Statements in Borrower's name relative to the Personal Property.

5.1.5 If one or more bonds have been required under Section 4.2.5, then such bond(s) shall have been delivered to Funding Lender (or to the appropriate Local Authority); and any conditions of its effectiveness shall have been fully satisfied.

5.1.6 Borrower shall submit a construction "time line" schedule or critical path schedule (the "Construction Schedule") to Funding Lender for Funding Lender's review and approval and Funding Lender shall have approved the Construction Schedule in its sole and absolute discretion.

Section 5.2 Subsequent Disbursement Conditions. Prior to making Disbursements after the Initial Disbursement, except for the last Disbursement, the following conditions shall have been satisfied:

5.2.1 The Initial Disbursement shall have occurred.

5.2.2 No Event of Default shall exist under any Funding Loan Documents or Borrower Loan Document.

5.2.3 All the conditions for the disbursement set forth in the paragraph indicated under Part II of the Disbursement Schedule shall have been satisfied.

5.2.4 The Funding Lender will require conditional mechanic's lien waiver matching the current Certification & Application for Payment G-702 in an AIA G702/G703 format or similar payment request from the General Contractor

5.2.5 The Funding Lender will require an unconditional lien waiver for the prior month's payment which the Funding Lender disbursed to the Borrower for the Borrower to pay to the General Contractor.

5.2.6 The Funding Lender will require conditional mechanics' lien waiver matching the current Certification & Application for Payment in an AIA G702/G703 format or similar from either specific sub-contractors posing any concern in regards to payment or performance or from monthly list of all subcontractors and material supplier to the General Contractor requesting funds that period.

5.2.7 The Funding Lender will require unconditional mechanics' lien waivers given prevailing known circumstances from either specific sub-contractors posing any concern in regards to payment or performance, or from the monthly list of all sub-contractors and material

suppliers to the General Contractor that were to have been paid from the prior month's disbursement.

5.2.8 If Funding Lender requests, it shall have received a list of the names and addresses of all material dealers, laborers and subcontractors with whom agreements have been made by the General Contractor and/or Borrower to deliver materials to and/or perform work on the Improvements.

5.2.9 The representations and warranties of Borrower made in Article VII hereof shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

5.2.10 The Improvements shall not have been materially injured or damaged by fire or other casualty unless Funding Lender shall have received insurance proceeds sufficient in its judgment to effect the satisfactory restoration of the Improvements and to permit the completion of the Improvements prior to the Completion Date.

5.2.11 If and when Funding Lender requests, Borrower shall have deposited into the Borrower's Funds Account, cash in the amount, estimated by Funding Lender, necessary to pay for the costs of completion of construction of the Improvements to the extent that the aggregate amount of the undisbursed Loan proceeds and Borrower's Funds that are then available, designated for the payment of the remaining costs to be incurred in the completion of construction of the Improvements is, in the opinion of Funding Lender, insufficient therefor.

5.2.12 Advice from Funding Lender's inspection agent to the effect that, to date, the Improvements have been constructed in accordance with the Plans and Specifications and that the present state of construction of the Improvements will, barring then unforeseen and unknown delays, permit completion of construction of the Improvements on or before the Completion Date.

5.2.13 Funding Lender shall have received: (a) if required by Funding Lender, the building permits, grading permits, or any other authorization, if any, which may be required from the Local Authority or Governmental Authority, or a "permit ready" letter for any such matters; (b) copies of the Plans and Specifications; (c) a copy of the General Contract, or, if none, copies of major contracts; (d) assignments to Funding Lender on Funding Lender's form of the plans and written consent thereto by the person or firm that prepared them and a copy of the Architect's agreement, if any, together with assignments thereof to Funding Lender on Funding Lender's form, with written consent thereto by said Architect; (e) assignment to Funding Lender of the General Contract and consent thereto by the General Contractor; (f) the Cost Breakdown; and (g) unless waived by Funding Lender, a signed acknowledgement of and consent to Funding Lender's first position security interest in any Off-Site Materials (as defined in Section 8.6 below).

5.2.14 If Funding Lender so requests, the Title Insurer shall have agreed (a) to issue its continuation endorsement to Funding Lender indicating that since the last preceding disbursement to Borrower or General Contractor, there has been no change in the state of title, that there are no intervening liens which may now or hereafter take priority over the

disbursement to be made and that there are no survey exceptions not theretofore approved by Funding Lender; and (b) upon completion of the foundation(s), to issue its foundation endorsement [CLTA 102.5 for a Project containing a single building or 102.7 for a Project containing multiple buildings], or equivalent, insuring Funding Lender that the foundation of each building is constructed wholly within the boundaries of the Property and does not encroach on any easements nor violate any covenants, conditions or restrictions of record.

Section 5.3 Final Construction Disbursement Conditions. Prior to the last Disbursement, the conditions set forth in Section 5.2 above shall be satisfied and in addition the following conditions shall have been satisfied by Funding Lender's receipt of:

5.3.1 advice from Funding Lender's inspection agent to the effect that the Improvements have been completed in accordance with the Plans and Specifications;

5.3.2 a conditional lien waiver upon final payment for the disbursement of retention to the Borrower to payment General Contractor, and either proof of the Borrower paying the same to the General Contractor or an unconditional lien waiver upon final payment from the General Contractor with ten (10) business days from the date the final disbursement was paid to Borrower;

5.3.3 evidence that Borrower has filed the Notice of Completion of the Improvements necessary to establish commencement of the shortest statutory period for the filing of mechanics' and materialmen's liens;

5.3.4 CLTA Endorsement 101.6 issued by Title Insurer subsequent to expiration of the period during which any lien for labor, services or material may be validly recorded against the Property or the Improvements or a 101.13 lien free endorsement or such other endorsements to Funding Lender's Title Insurance Policy as Funding Lender may require which shall insure that the Improvements have been completed free of all mechanics' and materialmen's liens or claims thereof;

5.3.5 evidence of approval of completion of the Improvements by Borrower (if Borrower is not an owner builder); and

5.3.6 evidence of approval of completion of the Improvements by the Guarantor, as such approval is deemed appropriate by Funding Lender.

Section 5.4 Back up Documentation; Form of Request. Funding Lender may require copies of paid invoices, cancelled checks or other backup information as Funding Lender may require in connection with each Disbursement. Funding Lender may elect to require differing backup documentation for costs of labor and materials incorporated into the Improvements and for soft costs and fees, and may change the documentation requirements from time to time during the term of the Borrower Loan with notice to Borrower. Funding Lender may provide Borrower with a required form of disbursement request or may elect to utilize a form provided by Borrower or the General Contractor.



Section 5.5 Special Conditions. All Disbursements shall be subject to satisfaction of any applicable special conditions pursuant to EXHIBIT F.

Section 5.6 Insurance. Within 10 days of the payment of the Disbursement of retention, Borrower must provide Funding Lender with evidence that the Builder's Risk Policy has been replaced with Property Insurance, as such capitalized terms are used and otherwise in accordance with the provisions and requirements in the Agreement to Furnish Insurance.

## ARTICLE VI

### BORROWER LOAN DISBURSEMENT

The proceeds of the Borrower Loan and Borrower's Funds shall be used only for the payment of Project Costs in accordance with the Plans and Specifications and other costs related thereto, as set forth on the Disbursement Schedule, and shall be disbursed as follows:

Section 6.1 Initial Disbursement. Immediately following Recordation of the Trust Deed and the Regulatory Agreement, and upon satisfaction of the conditions of Section 5.1 hereof, Funding Lender shall disburse in accordance with the Disbursement Schedule the Initial Disbursement to pay all costs, charges and expenses incurred in connection with the Borrower Loan or payable pursuant to this Borrower Loan Agreement, the Trust Deed or Security Agreements, excluding direct costs of labor and materials related to the Improvements, and including but not limited to Borrower Loan fees (which are deemed earned at Recordation of the Trust Deed and are not refundable in whole or part), service charges, title charges, tax and lien service charges, recording fees, escrow fees, appraisal fees, legal fees, real property taxes and assessments, insurance premiums, fees payable in connection with any commitment to provide permanent financing of the Improvements, and any amount required to pay existing loans affecting the Property.

Section 6.2 Subsequent Disbursement. Upon satisfaction of the conditions of Section 5.2 hereof, Funding Lender shall disburse directly to Borrower or, at Funding Lender's option, directly to General Contractor or to such persons as have actually supplied labor, material or services in connection with or incidental to the construction of the Improvements (or for the payment of the cost of any of Borrower's undertakings hereunder, in the Borrower Notes, the Trust Deed or the Security Agreements), such sums as are required for the payment of interest on the Borrower Loan and costs and expenses of construction of the Improvements and Disbursements shall be made in accordance with the applicable provisions of the Disbursement Schedule. Any funds disbursed hereunder to Borrower shall be received by Borrower in trust and Borrower agrees that the same shall be used only for the payment of those items contemplated by the particular Disbursement.

Section 6.3 Final Disbursement. The final Disbursement shall be the payment of any monies retained from progress payments or draws as set forth in the Disbursement Schedule. Subject to the provisions of this Borrower Loan Agreement, the final Disbursement shall be made only after Borrower has satisfied the conditions of Section 5.3 hereof and delivered or caused to be delivered to Funding Lender in addition to those required under Section 8.3 hereof, such additional endorsements or such additional policies of title insurance with

endorsements thereto as Funding Lender may require, with a liability limit of not less than the aggregate principal amount of the Borrower Notes, issued by Title Insurer, with coverage and in form satisfactory to Funding Lender, insuring Funding Lender's interest under the Trust Deed as a first lien on the Property, excepting only such items as shall have been approved in writing by Funding Lender. However, Funding Lender may withhold the final Disbursement until Borrower has furnished Funding Lender with the written approval of such final Disbursement by Title Insurer and the surety on any bond required by Funding Lender.

Section 6.4 Disbursement Limits; Deficiency of Borrower Loan Funds. Funding Lender shall not be required to disburse an aggregate amount of the Borrower Loan proceeds for labor furnished to and materials incorporated into the Improvements during any stage of construction which exceeds the lesser of the value of such labor or materials or the amount allocated to that stage of construction as set forth in the Disbursement Schedule, and in any event, Funding Lender shall not be required to disburse any amount which, in Funding Lender's opinion, will reduce that portion of the undisbursed Borrower Loan proceeds designated for the cost of completion of construction of the Improvements below that needed to pay for the labor and material necessary to complete the Improvements. Any deficiency of funds, as determined by Funding Lender, shall be corrected by an immediate deposit of Borrower's Funds into the Borrower's Funds Account upon ten (10) days notice from Funding Lender.

Section 6.5 Set Aside Letters. Subject to fulfillment of all applicable conditions and the terms and procedures set forth in this Borrower Loan Agreement, and while no uncured Event of Default is outstanding, the Funding Lender shall issue Set Aside Letters from time to time upon written request of the Borrower, provided that (i) the obligation of the Funding Lender to issue any Set Aside Letter shall be subject to receipt by the Funding Lender of Funding Lender's applicable Set Aside Letter Fee and to the Funding Lender's approval, in its sole discretion, of the form and substance of the Set Aside Letter and the purpose and maximum amount of the Set Aside Letter, and (ii) unless the Funding Lender otherwise consents, no Set Aside Letter shall obligate the Funding Lender to advance funds after the latest maturity date for the Borrower Loan provided in the Borrower Notes and no Set Aside Letter shall be issued if the Funding Lender has reasonably determined that any =Project Costs intended to be covered by such Set Aside Letter are not likely to be incurred prior to such maturity date. The maximum amount that the Funding Lender may be obligated to fund under any Set Aside Letter at any time plus any amounts actually funded by the Funding Lender under any such Set Aside Letter shall reduce, to that extent, the amount otherwise available to be disbursed or set aside for other Project Costs covered by the same line item, and any amount funded by the Funding Lender under any Set Aside Letter shall be deemed to be a disbursement of the proceeds of the Borrower Loan or Borrower's Funds (as the case may be) for purposes of this Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents, except that the funding of any such amount shall not be subject to any conditions or requirements other than those set forth in the Set Aside Letter.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower represents and warrants (which representations and warranties shall survive any investigations, inspections or inquiries made by Funding Lender or by Governmental Lender or any of their respective representatives or any Disbursements made by Funding Lender hereunder) that:

Section 7.1 Formation and Qualification. Borrower, if a corporation, is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified in the state in which the Project is located, and if a partnership, trust or other entity is duly formed and validly existing under the laws of the jurisdiction of its formation and, in the case of a limited partnership or limited liability company formed under the laws of a jurisdiction other than the State in which the Project is located, is duly registered in such State; and if Borrower is a corporation, limited liability company, or limited partnership, Borrower further is in good standing in the State in which the Project is located, and Borrower has all requisite power and authority to conduct its business and to own and lease its properties.

Section 7.2 Borrower Loan Documents. The execution, delivery and performance of the Borrower Loan Documents are within Borrower's power and authority, have been duly authorized by all necessary action and do not and will not (a) require any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any Governmental Authority or other person, which has not been obtained, (b) contravene the organizational documents and governing agreements of Borrower, any applicable laws or other requirements or any agreement or restriction binding on or affecting Borrower or its property, or (c) result in or require the creation or imposition of any lien or right of others upon or with respect to any property now or in the future owned by Borrower (other than liens in favor of the Funding Lender). No authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any Governmental Authority or other person, which has not been obtained is required for the creation of the security interests in the Property or other assets of Borrower pursuant to the Trust Deed and Security Agreements or the enforcement by the Funding Lender of its remedies under the Borrower Loan Documents. Each Borrower Loan Document, when executed and delivered, will constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or other similar laws affecting the rights of creditors generally.

Section 7.3 Project Information. The Borrower and, to the best knowledge of the Borrower, any prior developer of the Project and any Governmental Authority having jurisdiction over the Project have complied in all material respects with all Governmental Requirements and other requirements relating to the division and development of the Property, and the Borrower is, and construction of the Improvements in accordance with the terms of this Borrower Loan Agreement will be in compliance in all material respects with all Governmental Requirements and other requirements relating to the Project. The development and use of the

Property for its intended purpose do not require the payment of extraordinary fees or assessments or the construction of other improvements not set forth in the Cost Breakdown and the Plans and Specifications, will not contravene any Governmental Requirements or other requirements, and are not subject to any other legal, contractual or practical impediments which are material in the aggregate. The Cost Breakdown is based on information deemed reliable by the Borrower and represents the Borrower's best estimate of all Project Costs that will be required in connection with the Project, and all Project Costs shown in the Cost Breakdown as "Previously Paid by Borrower" have been paid in full.

Section 7.4 Plans and Specifications, Defects. The Plans and Specifications are satisfactory to Borrower, have been approved by Guarantor and Completion Guarantor, and to the extent required by Governmental Requirement or Local Requirement or any effective restrictive covenant, by all Local Authorities and the beneficiary of any such covenant respectively; all construction, if any, heretofore performed on the Improvements has been performed within the perimeter of the Property in accordance with the Plans and Specifications and any restrictive covenants applicable thereto; there are no structural defects in the Improvements, and no violation of any Governmental Requirement or Local Requirement exists with respect thereto.

Section 7.5 Financial Statements. The Financial Statements heretofore delivered to Funding Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting practice, fairly present the respective financial conditions of the subjects thereof as of their respective dates, no Material Adverse Change has occurred in the financial conditions reflected therein since their respective dates and no additional borrowings have been made by Borrower since the date thereof other than the borrowing contemplated hereby or approved by Funding Lender.

Section 7.6 Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened against or affecting it, the Property, Guarantor or Completion Guarantor or involving the validity or enforceability of the Trust Deed or the priority of the lien thereof, at law or in equity, or before or by any Governmental Authority or Local Authority. To the Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand or any court or any Governmental Authority or Local Authority.

Section 7.7 No Breach. The consummation of the transaction hereby contemplated and performance of this Borrower Loan Agreement, Trust Deed and Security Agreements and any other Borrower Loan Documents and Funding Loan Documents will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, bank loan or security agreement, corporate charter, by-laws or other instrument or agreement to which the Borrower is a party or by which it may be bound or affected.

Section 7.8 Utilities. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are either available at the boundaries of the Property or all necessary steps have been taken by Borrower and Local Authority to assure the complete construction, installation, connection and use of utility

services for the full utilization of the Improvements, including water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities.

Section 7.9 Certified Invoice. Each Certified Invoice shall be true and accurate and the submission of same or the receipt of the funds so requested shall constitute a reaffirmation of the representations, warrants and covenants contained herein.

Section 7.10 Other Liens. Borrower has made no contract or arrangement of any kind, the performance of which by the other party thereto would give rise to a lien on the Property, except for its arrangements with Borrower's Architect, the General Contractor or the major subcontractors if there is no General Contractor, and as may otherwise be approved by the Funding Lender.

Section 7.11 Streets. All streets, sidewalks, if required, and other offsite improvements necessary for the full utilization of the Improvements for their intended purposes have either been completed or the necessary rights-of-way therefor have either been acquired by Local Authority or have been dedicated to public use and accepted by Local Authority and all necessary steps have been taken by Borrower and Local Authority to assure the complete construction and installation thereof so as not to impede the construction, approval for occupancy or sale of the Project.

Section 7.12 Legality of Sales; Special Taxes. The Property is not subject to or affected by any existing or proposed Special Taxes (other than Special Taxes approved in writing by the Funding Lender after the date of this Borrower Loan Agreement), and any common areas to be transferred to a homeowners association are separately transferable in compliance with all applicable Governmental Requirement or Local Requirement and other requirements.

Section 7.13 [Reserved.]

Section 7.14 [Reserved.].

Section 7.15 No Default. There is no default on the part of Borrower under this Borrower Loan Agreement or any other Borrower Loan Document, and no event has occurred and is continuing which with notice or the passage of time or either would constitute a default under any thereof.

Section 7.16 CC&R's; Zoning. Borrower has examined, is familiar with, and the Improvements will in all respects conform to and comply with all covenants, conditions, restrictions, reservations and Governmental Requirement or Local Requirement affecting the Property.

Section 7.17 Title to Personal Property. Any personal property required by Funding Lender as additional security for the Borrower Notes is vested in Borrower free and clear of all liens, encumbrances and adverse claims and that the security interest of Funding Lender in the personal property shall be a first lien thereon.

Section 7.18 Other Financing. Borrower has not received other financing for either the acquisition of the Property or the construction and installation of the Improvements except as has been specifically disclosed in writing to, and approved by, Funding Lender prior to Recordation of the Trust Deed.

Section 7.19 Borrower's Powers. Borrower has full power and authority to execute this Borrower Loan Agreement, the Borrower Notes, the Trust Deed, the Security Agreements and the Regulatory Agreement, and to undertake and consummate the transactions contemplated hereby and thereby, and to pay, perform and observe its conditions, covenants, agreements and obligations herein and therein contained.

Section 7.20 Commissions and Fees. Borrower has not dealt with any person, firm or corporation who is or may be entitled to any finder's fee, brokerage commission, loan commission or other sum in connection with the execution of this Borrower Loan Agreement, the consummation of the transactions contemplated hereby and the making of the Borrower Loan by Funding Lender to Borrower, and Borrower does hereby indemnify and agree to hold Funding Lender and Governmental Lender harmless from and against any and all loss, cost liability or expense, including attorney's fees, Funding Lender or Governmental Lender may suffer or sustain should such warranty or representation prove inaccurate in whole or in part.

Section 7.21 General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

Section 7.22 Approval of the Borrower Loan Documents and Funding Loan Documents. By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender in any manner.

Section 7.23 Funding Loan Agreement. The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

Section 7.24 Requirements of Act, Code and Treasury Regulations. The Project satisfies all requirements of the Act, the Code and the Treasury Regulations applicable to the Project.

Section 7.25 Regulatory Agreement. The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent

such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code and the Treasury Regulations, and pursuant to leases which comply with all applicable laws.

Section 7.26 Intention to Hold Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

Section 7.27 Survival of Representations and Covenants. All of the representations and warranties in this Article VII and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or on its behalf.

## ARTICLE VIII

### BORROWER'S COVENANTS

Borrower covenants and agrees as follows, until the full and final payment of the Borrower Loan, unless Funding Lender waives compliance in writing:

Section 8.1 Borrower's Funds. At the time and in amounts required by Funding Lender, Borrower shall deposit Borrower's Funds in the Borrower's Funds Account. Borrower's Funds shall be disbursed from such account in the manner provided in Article VI herein. Should it appear at any time that the total undisbursed proceeds of the Borrower Loan together with any Borrower's Funds then held by Funding Lender are insufficient, in Funding Lender's good faith judgment, to provide the financing for the completion of the Improvements, Borrower, within ten (10) days following receipt of written demand by Funding Lender for additional funds, shall pay to Funding Lender an amount equal to such deficiency as expressed in said demand for deposit in the Borrower's Funds Account.

Notwithstanding the foregoing, there is hereby created within the Borrower's Funds Account, as of the Initial Closing Date, a Note Proceeds Subaccount into which shall be deposited the proceeds of the Borrower Loan funded on the Initial Closing Date as described in Section 2.1(b) of the Funding Loan Agreement. Amounts in the Note Proceeds Account shall be disbursed in the same manner as are funds on deposit in the Borrower's Funds Account; provided that available funds in the Borrower's Funds Account, other than funds in the Note Proceeds Subaccount, shall be used for purposes of the Borrower's Funds Account before any amounts in the Note Proceeds Account are used for such purposes.

Section 8.2 Improvements Inspection. Borrower shall permit Funding Lender and Governmental Lender, or their respective representatives (and Funding Lender and



Governmental Lender shall have the right) to enter upon the Property, inspect the Improvements and all materials to be used in the construction thereof and to examine the Plans and Specifications and all detailed plans and shop drawings which are or may be kept at the construction site and will cooperate, and Funding Lender shall have the right to have Borrower cause the General Contractor or, if none, the major subcontractors, to cooperate with Funding Lender. Inspection by Funding Lender of construction shall be for the purpose of protecting the security of Funding Lender and such inspection is in no way to be construed as a representation that there is a compliance with the Plans and Specifications or that the construction is free from faulty material or workmanship.

Section 8.3 Title Insurance. Borrower shall deliver or cause to be delivered to Funding Lender at Recordation of the Trust Deed or within a reasonable time thereafter an ALTA 1970 Loan Policy of Title Insurance (LP-10 Package, if applicable), or its equivalent, with a liability limit of not less than the face amount of the Borrower Notes, issued by Title Insurer, insuring Funding Lender's interest under the Trust Deed as a valid first lien on the Property, together with such reinsurance or coinsurance agreements and endorsements to said policy as Funding Lender may require. Said policy shall contain only such exceptions from its coverage as shall have been approved in writing by Funding Lender. After Recordation of the Trust Deed, Borrower shall at its own cost and expense, maintain the Trust Deed as a first lien on the Property and deliver or cause to be delivered to Funding Lender from time to time the endorsements and policies referred to herein.

Section 8.4 Construction Start. Borrower shall not commence construction of the Improvements, including grading and site clearance, or undertake any act on the Property prior to Recordation of the Trust Deed, the result of which would cause any mechanics' or materialman's lien thereafter filed to take priority over the lien of the Trust Deed unless Title Insurer provides Funding Lender with insurance satisfactory to Funding Lender protecting Funding Lender against any such mechanic's or materialman's liens; and to cause construction of the Improvements to be commenced not more than thirty (30) days after the Recordation of the Trust Deed and thereafter to diligently prosecute such construction so that the same will be completed, in any event, on or before the Completion Date.

Section 8.5 Plans and Specifications. If the Plans and Specifications for the Site Improvements, the buildings comprising the Improvements, or both, have not been completed, approved by Borrower and Funding Lender, and listed on EXHIBIT C of this Borrower Loan Agreement prior to Recordation of the Trust Deed, then anything herein to the contrary notwithstanding, (a) Borrower shall not permit any contractor to commence work on any of the Site Improvements or building for which Borrower and Funding Lender have not executed a revised EXHIBIT C setting forth the approved Plans and Specifications therefor pursuant to clause (b), below, nor shall any disbursements of Loan proceeds or of funds from a Borrower's Funds Account be available for any line item of the Cost Breakdown until the same are so approved by Borrower and Funding Lender, and (b) promptly after Recordation of the Trust Deed, Borrower shall deliver to Funding Lender for approval the Plans and Specifications for the applicable portions of the Improvements, and when approved by Funding Lender, Borrower and Funding Lender each shall execute a revised EXHIBIT C to this Borrower Loan Agreement specifying the approved Plans and Specifications. Once approved by Funding Lender, the prior written consent of Funding Lender shall be required for any change in the



Plans and Specifications which is material. A change shall be considered "material" if it: (i) constitutes a material change in the building material or equipment specifications, the architectural or structural design, value, or quality of any of the Improvements, including but not limited to any of the matters described in clause (b) of Section 8.27, or (ii) would result in an increase in any one cost item shown in the Cost Breakdown (an "Item") for each respective building in excess of the Cumulative Change Order Amount. Borrower shall notify Funding Lender as soon as practical regarding all changes whether or not such change is subject to Funding Lender's approval. Except as provided above, there shall be no change in the Plans and Specifications without the prior written consent of Funding Lender. All requests for approval shall be submitted on a change order form acceptable to Funding Lender signed by Borrower and, if required by Funding Lender, the Architect and the General Contractor, if any, accompanied by working drawings and a written narrative of the proposed change. As a condition to any such approval, Funding Lender may require satisfactory evidence of the cost of the proposed change and the time necessary to complete the proposed change; and, to the extent Funding Lender determines that the proposed change shall result in an increase in cost, Funding Lender shall have the right to require Borrower to deposit funds in the Borrower's Funds Account. Borrower acknowledges that this approval process may result in delays and Borrower consents to all such reasonable delays. No such delay will result in the extension of the Completion Date. Upon Funding Lender's request, Borrower, the Architect, and the General Contractor, shall initial the copy of the Plans and Specifications delivered to, and approved by, Funding Lender as a true copy of the Plans and Specifications for the Improvements. Borrower shall maintain at all times a full and complete set of working drawings for the Improvements available for inspection by Funding Lender. Within ten (10) days after Funding Lender's request, Borrower shall deliver to Funding Lender complete as-built Plans and Specifications, if available, for the Improvements completed.

Section 8.6 Contractor Lists. Within ten (10) days following Funding Lender's request, Borrower shall furnish to Funding Lender a list of all major contractors, subcontractors and material suppliers to be employed in connection with the construction of the Improvements. Each list shall set forth:

(a) the name, address and telephone number of each contractor, subcontractor and material supplier; and

(b) the dollar amount of each contract, subcontract and material contract; and

(c) the amount paid to each contractor, subcontractor and material supplier through the date of each list; and

(d) the dollar amount of the work performed and material supplied under each contract, subcontract and material contract through the date of each list; and

(e) if any of the materials supplied are to be delivered to, or stored at, a location not on the Property ("Off-Site Materials"), the exact location at which the Off-Site Materials will be delivered and stored must be shown. In such event, Borrower must provide Funding Lender with a written consent, in form and content satisfactory to Funding Lender, executed by the seller of such Off-Site Materials and acknowledging

Funding Lender's first position security interest in the Off-Site Materials and consenting thereto.

Section 8.7 General Contractor Covenant. Borrower shall require covenants from the General Contractor to the same effect as the covenants made by Borrower in the preceding Sections 8.5 and 8.6, and Borrower shall cause General Contractor, upon request, to deliver to Funding Lender the names of all persons with whom General Contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.

Section 8.8 Other Contractors. Borrower shall not execute any contract or become party to any arrangement for the performance of work on the Property except with the General Contractor, if there is one. If there is no General Contractor, Borrower shall only contract with major subcontractors approved by Funding Lender for the performance of work on the Property.

Section 8.9 Leases. Borrower shall deliver to Funding Lender [a rent roll] [an executed counterpart] of all Leases, if any, of the Property whether executed before or after the date hereof.

Section 8.10 [RESERVED.]

Section 8.11 Foundation Completion. Borrower shall notify Funding Lender immediately upon completion of the foundation of the Improvements.

Section 8.12 Personal Property Installation. Borrower shall not install materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any person, firm or corporation to remove or repossess any such material, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at time of installation, without Funding Lender's written consent.

Section 8.13 Insurance. Prior to any Disbursement hereunder, Borrower shall procure and deliver certificates thereof to Funding Lender and at all times thereafter maintain a policy or policies of insurance in form and content and by an insurer or insurers satisfactory to Funding Lender, including a clause giving Funding Lender a minimum of thirty (30) days' notice if such insurance is canceled, meeting the terms of any separate insurance requirements letter executed in connection with the Borrower Loan, or if none, as follows: (i) broad form "all risk" property insurance in an amount not less than the insurable value of the Improvements on a full replacement cost basis, with construction cost increase and building code change coverage, including building risk, fire, extended coverage, vandalism, and malicious mischief, course of construction endorsement and a loss payable endorsement naming Funding Lender as payee, (ii) liability insurance indicating coverage satisfactory to Funding Lender naming Funding Lender as an additional insured, (iii) Workers' Compensation Insurance, and (iv) Flood and/or Earthquake Hazard Insurance, if required by Funding Lender.

Section 8.14 Maintain Records. Borrower shall keep and maintain full and accurate accounts and records of its operations according to generally accepted accounting principles and practices for its type of business.

Section 8.15 Taxes. Borrower shall pay and discharge all lawful claims, including taxes, assessments, and governmental charges or levies imposed upon it or its income or profits or upon any properties belonging to it prior to the date upon which penalties attach thereto; provided that Borrower shall not be required to pay any such tax, assessment, charge, or levy, the payment of which is being contested in good faith and by proper proceedings so long as proceedings for collection thereof have been stayed and the obligation to pay is secured by the posting of a bond or other legally sufficient security.

Section 8.16 Notification of Events of Default. Borrower shall promptly notify Funding Lender in writing of the occurrence of any Event of Default under this Borrower Loan Agreement, or any default under the Borrower Notes, the Trust Deed or the Security Agreements or of any facts then in existence which would become an Event of Default hereunder or a default thereunder upon the giving of notice or the lapse of time or both.

Section 8.17 Payment of Expenses. Borrower shall pay within five (5) days after Funding Lender's demand, all reasonable and necessary expenses incidental to the making and administration of the Borrower Loan including, without limit, preclosing and closing expenses, commitment fees, expenses incurred for architectural and engineering review, construction inspection fees, environmental review fees, attorney's fees and appraiser's fees, regardless of whether any such services are provided by Funding Lender's employees or agents or by independent contractors. Funding Lender's good faith determination that an expense is a reasonable and necessary expense incidental to the making of the Borrower Loan shall constitute a conclusive determination of Borrower's obligation to pay such expense.

Section 8.18 No Conveyance or Encumbrance. Borrower covenants and agrees not to sell, convey, transfer, dispose of, grant a lien or security interest in, or otherwise further encumber the Property or the Improvements or any part thereof or any interest therein or enter into a lease covering all or any portion thereof or an undivided interest therein, either voluntarily, involuntarily or otherwise, or enter into an agreement so to do without the prior written consent of Funding Lender being first had and obtained. All easements, declarations of covenants, conditions and restrictions, and private or public dedications affecting the Property shall be submitted to Funding Lender for its approval and such approval shall be obtained prior to the execution or granting of any thereof by Borrower, accompanied by a drawing or survey showing the precise location of each thereof. Any of the following transfers of any beneficial interest in Borrower shall be deemed to constitute a transfer of the Property for purposes of this Section: (a) if Borrower is a partnership, the transfer of any general partnership interest or (unless traded in a recognized public exchange) of more than twenty-five percent (25%) of the limited partners' interest; (b) if Borrower is a corporation, the transfer (unless traded in a recognized public exchange) of more than twenty-five percent (25%) of the voting common shares or the creation or issuance of any new class of shares, (c) if Borrower is a limited liability company, the transfer (unless traded in a recognized public exchange) of more than twenty-five percent (25%) in interest therein, and (iv) if Borrower is a trust, any change in the effective holding of the beneficial interest of more than twenty-five percent (25%) of the assets thereof.

Section 8.19 Comply With Government Requirements. Borrower shall promptly comply with any Governmental Requirement or Local Requirement.

Section 8.20 Diligent Construction. Borrower shall cause the construction of the Improvements to be promptly commenced within thirty (30) days after Recordation of the Trust Deed and thereafter prosecuted with diligence and continuity and completed in accordance with the Plans using new materials and workmanship free from fault on or before the Completion Date, free and clear of liens or claims for liens.

Section 8.21 Satisfy Conditions. Borrower shall cause all conditions hereof to be satisfied at the time and in the manner herein provided.

Section 8.22 Application of Disbursements. Borrower shall receive the disbursements to be made hereunder as a trust fund for the purpose of paying the costs of construction of the Improvements and it will apply the same first to such payment before using any part thereof for any other purpose.

Section 8.23 Approval. Borrower shall obtain and deliver to Funding Lender evidence of the unconditional approval by Local Authority, local Board of Fire Underwriters or its equivalent and by any other applicable Governmental Authority of the Improvements in their entirety for permanent occupancy to the extent any such approval is a condition of the lawful use and occupancy of the Improvements.

Section 8.24 Paid Vouchers. Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements, under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements.

Section 8.25 Preliminary Notices. Upon written request, Borrower shall deliver to Funding Lender copies of all preliminary notices and other matters served on Borrower pursuant to the mechanics lien and stop notice or notice to withhold laws of the State in which the Property is located.

Section 8.26 Defect Corrections. Upon demand of Funding Lender, Borrower shall correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Funding Lender; the advance of any Loan proceeds shall not constitute a waiver of Funding Lender's right to require compliance with this covenant with respect to any such defects or departures from the Plans and Specifications.

Section 8.27 Contract Changes. Borrower shall not, without the prior written consent of Funding Lender, permit any change in the Plans and Specifications, or in any contract which: (a) when added to the cumulative amount of all increases in the contract price resulting from Change Orders heretofore agreed to by Borrower, would result in a change in the contract price or in the cost of construction of the Improvements in excess of the Cumulative Change Order Amount or (b) change the number of buildings comprising the Improvements, or reduce or increase the square footage of any such building by more than one hundred (100) square feet or change the number of such buildings or the number of floors or footprint of any such building.

Section 8.28 Cost Breakdown Changes. Without Funding Lender's prior written consent, Borrower shall not change the Cost Breakdown. With such consent, which may be granted or withheld in Funding Lender's sole discretion, the Cost Breakdown may be changed from time to time; however, Funding Lender shall not be obligated to approve such changes unless Funding Lender shall have received evidence satisfactory to it that (i) the change in such Cost Breakdown is reasonable and necessary, and (ii) in the opinion of Funding Lender, there remains sufficient funds in the undisbursed portion of the Borrower Loan and of unexpended Borrower's Funds allocated in the Disbursement Schedule for the costs of construction of the Improvements to pay for all remaining costs of completion of construction of the Improvements. If Funding Lender determines there is a deficiency of such sums, Funding Lender may require a further deposit of Borrower Funds in the Borrower Funds Account as a condition of approving the change.

Section 8.29 Marketing and Leasing. Subject in all respects to the requirements of the Regulatory Agreement, Borrower shall (a) diligently market the Improvements for lease to qualified Tenants in compliance with all Governmental Requirements for rents consistent with fair market levels, and with rent prepaid for no more than one (1) month in advance; and (b) furnish to Funding Lender a monthly written report on the status of all leasing activities for the Project, and, upon Funding Lender's request, a statement certified by Borrower in a form approved by Funding Lender showing all lease transactions pending, including identity of proposed tenants, basic economic terms, and any other information requested by Funding Lender.

Section 8.30 Net Operating Income. Borrower shall deliver to Funding Lender, on or before the fifteenth (15th) day of each calendar month, commencing with the first month after any Tenant or other user of all or any part of the Project first commences paying rent or making any other payments to Borrower regardless of whether such payments are characterized as rent, and each and every calendar month thereafter, both of the following:

(a) Following an Event of Default and the request of Funding Lender, a monthly statement of net operating income of the Project for the immediately preceding calendar month, prepared on a cash basis in accordance with accounting standards established by the Financial Accounting Standards Board for real property similar to the Project (and in any case excluding depreciation and other non-cash expenditures); and

(b) payment in immediately available funds of the lesser of (i) accrued interest on the Borrower Loan for the immediately preceding calendar month in accordance with the terms of the Borrower Notes, or (ii) the amount of such net operating income (the "Monthly NOI Installment").

The Monthly NOI Installments paid to Funding Lender hereunder shall be held by Funding Lender and applied to the interest accrued on the Borrower Loan, on a priority basis before application of any remaining interest reserve held by Funding Lender.

Section 8.31 [Reserved.]

Section 8.32 Delivery of Financial Information. After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender, deliver copies of all financial information required under Article XIVA.

Section 8.33 Governmental Lender's and Funding Lender's Fees. Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Governmental Lender Fee) and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 8.34 Expenses. Borrower shall pay all reasonable expenses incurred by the Governmental Lender and the Funding Lender in connection with the Borrower Loan and the Funding Loan, including the fees and expenses of the Governmental Lender's and the reasonable fees and expenses of the Funding Lender's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all expenses of the Governmental Lender and all reasonable expenses of the Funding Lender in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender for all amounts, and the Funding Lender for all reasonable amounts, expended, advanced or incurred by the Governmental Lender and the Funding Lender to collect the Borrower Notes, or to enforce the rights of the Governmental Lender and the Funding Lender under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender and the Funding Lender under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by the Governmental Lender and reasonably incurred by the Funding Lender in connection with any such matters (whether or not litigation is instituted), together with interest at a rate equal to the Default Interest on each such amount from the date of its advance until the date of reimbursement to the Governmental Lender and the Funding Lender, respectively, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 8.34 shall survive the term of this Borrower Loan Agreement and the exercise by the Governmental Lender or the Funding Lender, as the case may be, of any of its rights or remedies under the Borrower Loan

Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party.

Neither the Borrower nor the Governmental Lender shall be responsible for any costs associated with any securitization of the Borrower Loan or the Funding Loan.

Section 8.35 Indemnity. In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender or Funding Lender pursuant hereto, pursuant to the Regulatory Agreement and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Administrator (as defined in the Regulatory Agreement), the Beneficiary Parties, and each of their respective members of the Board of Supervisors, officers, directors, employees, attorneys and agents (each an "Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except as to the Funding Lender with respect to any Secondary Market Disclosure Document (other than any of Borrower's obligations under Article XIVA);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien or charge upon payments by the Borrower to the Governmental Lender or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof, during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) [Reserved];

(g) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(h) Any Determination of Taxability;

(i) Any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, General Partner, Guarantor or their affiliates to Governmental Lender, the Funding Lender or any other Person in connection with Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(j) any failure (or alleged failure) by Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(k) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(l) the use of the proceeds of the Borrower Loan and the Funding Loan,

except (i) in the case of the foregoing indemnification of the Funding Lender or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party; or (ii) in the case of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 14A.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article XIVA hereof shall be limited to the indemnity set forth in Section 14A.1.4 hereof.

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the



payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to the foregoing provisions if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan. The foregoing provisions shall survive the termination of this Borrower Loan Agreement.

Section 8.36 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender. Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

Section 8.37 Right of Access to the Project. The Borrower agrees that the Governmental Lender and the Funding Lender, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Property (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender and the Funding Lender, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

Section 8.38 Notice of Default. The Borrower will advise the Governmental Lender and the Funding Lender promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 8.39 Covenant With Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by the Funding Lender of the Governmental Lender Notes and, accordingly, all

covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender and the Funding Lender and any lawful owner or pledgee of the Borrower Notes or the Governmental Lender Notes from time to time.

Section 8.40 Obligation of the Borrower to Construct the Project. The Borrower shall proceed with reasonable dispatch to construct and equip the Project. If the proceeds of the Borrower Loan, together with the other Borrower moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender or the Funding Lender in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project, and the Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 8.41 Maintenance of Insurance. Borrower will maintain the insurance required by the Trust Deed.

Section 8.42 Information; Statements and Reports. Borrower shall furnish or cause to be furnished to Funding Lender:

(a) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default or Potential Default, a statement of an Authorized Representative of Borrower describing the details of such Event of Default or Potential Default and any curative action Borrower proposes to take;

(b) Financial Statements; Rent Rolls. In the manner and to the extent required under the Trust Deed, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Trust Deed and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(c) General Partner. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of General Partner, copies of the financial statements of General Partner as of such date, prepared in substantially the form previously delivered to Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

(d) Leasing Reports. Prior to the Conversion Date, on a monthly basis (and in any event within fifteen (15) days after the end of each calendar month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such

calendar month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(e) Audit Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) Notices; Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower or General Partner naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(g) Certification of Non-Foreign Status. Promptly upon request of Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Funding Lender;

(h) Compliance Certificates. Together with each of the documents required pursuant to subsection (b) above submitted by or on behalf of Borrower, a statement, in form and substance satisfactory to Funding Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, General Partner, Guarantor or the Project, as Funding Lender reasonably requests from time to time.

Section 8.43 Additional Notices. Borrower will, promptly after becoming aware thereof, give notice to Funding Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against Borrower, General Partner or Guarantor, or any Legal Action which is threatened against Borrower, General Partner or Guarantor which, in any case, if adversely determined, could have a material

adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of Borrower, General Partner, Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower, General Partner or Guarantor is a party or by or to which Borrower, General Partner or Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of Borrower under any of the CC&R's together with a copy of each notice of default, alleged default or potential default received from any other party thereto;

(e) any notice of default, alleged default or potential default on the part of Borrower received from any Tenant under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the Tenants have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or General Partner; or (iii) the nature of the trade or business of Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investor) under the Partnership Agreement.

#### Section 8.44 Compliance With Other Agreements; Legal Requirements.

(a) Borrower shall timely perform and comply with, and shall cause General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction of the Improvements, and will furnish Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the dwelling units in the Project to be rented to persons of low or moderate income. The

Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. Funding Lender shall at all times have the right to audit, at Borrower's expense, Borrower's compliance with any agreement requiring a certain percentage of the dwelling units in the Project to be rented to persons of low or moderate income, and Borrower shall supply all such information with respect thereto as Funding Lender, as applicable, may request and otherwise cooperate with Funding Lender, as applicable, in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

Section 8.45 Completion and Maintenance of Project. Borrower shall cause the construction of the Improvements to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with this Borrower Loan Agreement, free and clear of any liens or claims for liens (but without prejudice to Borrower's rights of contest under Section \_\_\_\_ hereof) on or before the Completion Date. Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

Section 8.46 Income From Project. Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Conversion Date, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

Section 8.47 Leases and Occupancy Agreements.

(a) Lease Approval.

(i) Borrower has submitted to Funding Lender, and Funding Lender has approved, Borrower's standard form of tenant lease for use in the Project. Borrower shall not materially modify that approved lease form without Funding Lender's prior Written Consent in each instance, which consent shall not be unreasonably withheld or delayed. Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease, and is executed in the form as an exhibit to this Borrower Loan Agreement without material modification;

(B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any

applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to this Borrower Loan Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(ii) If any Event of Default has occurred and is continuing, Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

(iii) No approval of any lease by Funding Lender shall be for any purpose other than to protect Funding Lender's security for the Borrower Loan and to preserve Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by Funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) Landlord's Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with the Manager, Borrower shall not without the approval of Funding Lender enter into any leasing or marketing agreement and Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

Section 8.48 Project Agreements and Licenses. To the extent not heretofore delivered to Funding Lender, Borrower will furnish to Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to Funding Lender and consents to such assignments where required by Funding Lender, all in form and substance acceptable to Funding Lender. Neither Borrower nor General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender.

Section 8.49 Payment of Debt Payments. In addition to its obligations under the Borrower Notes, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of the Borrower Notes or other instruments or agreements evidencing or securing such Debt; (iii) promptly inform Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Trust Deed (regardless of whether or not permitted under this Borrower Loan Agreement).

Section 8.50 Funds From Equity Investor. Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms of the Partnership Agreement, provided that the parties to this Borrower Loan Agreement acknowledge and agree that such Equity Contributions are subject to adjustment in amounts and time of delivery as set forth in the Partnership Agreement.

Section 8.51 Tax Covenants. The Borrower further represents, warrants and covenants as follows:

(a) General. The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Notes from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Trust Deed and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Notes or affecting the Project. Capitalized terms used in this Section 8.51 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Funding Loan Agreement, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Affect Opinion (other than with respect to interest on any portion of the Governmental Lender Notes for a period during which such portion of the Governmental Lender Notes are held by a "substantial user" of any facility financed with the proceeds of the Funding Loan or a "related person," as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 8.51.

(b) Use of Proceeds. The use of the proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) *Limitation on Net Proceeds*. At least 95% of the proceeds of the Funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified Project Costs that are costs of a "qualified residential rental project" (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is "functionally related and subordinate" thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Treasury Regulations).

(ii) *Limit on Costs of Funding*. The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan Agreement and no portion thereof in excess of two percent of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of Funding.

(iii) *Prohibited Facilities.* The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) *Limitation on Existing Facilities.* No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in Section 147(d)(3) of the Code.

(v) *Accuracy of Information.* The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower's information statement pursuant to Section 149(e) of the Code is accurate and complete as of the Initial Closing Date.

(vi) *Limitation of Project Expenditures.* The acquisition, construction and equipping of the Project were not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of Resolution No. 2012/196 of the Governmental Lender with respect to the Project on May 8, 2012, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible "preliminary expenditures", which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of construction or acquisition of the Project.

(vii) *Qualified Costs.* The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code and that for the greatest number of buildings the proceeds of the Funding Loan shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Funding Loan for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding



Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders or payees of the Funding Loan and the Borrower Notes for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) Limitation on Maturity. The average maturity of the Governmental Lender Notes does not exceed 120 percent of the average reasonably expected economic life of the Project, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Initial Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Funding Loan or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the Governmental Lender Notes to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Borrower Notes relating to the Funding Loan, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan, unless the Borrower has obtained in each case a Tax Counsel No Adverse Affect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Funding Loan to the latest Maturity Date (as defined in the Funding Loan Agreement), except as permitted by Section 148 of the Code and Treasury Regulations thereunder. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Treasury Regulations thereunder relating to the Funding Loan and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Initial Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts prior to the Computation Date, annually not later than forty-five days after the

anniversary of the Initial Closing Date and subsequent to the Computation Date, not later than forty-five days after the fifth anniversary of the Initial Closing Date and each five years thereafter and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(e) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Treasury Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Treasury Regulations and rulings thereunder.

(f) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Notes for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) Qualified Residential Rental Project. The Borrower hereby covenants and agrees that the Project will be operated as a "qualified residential rental project" within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Funding Loan remains outstanding, to the end that the interest on the Governmental Lender Notes shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Notes to be filed with the Internal Revenue Service within prescribed time limits.

(i) Funding Loan Not a Hedge Bond. The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Initial Closing Date.

(j) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section \_\_\_\_ hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the Funding Loan will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 8.51 may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Notes to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the includability of interest on the Governmental Lender Notes in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 8.51, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section

8.51; provided, however, that the Funding Lender shall take no action under this Section 8.51 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 8.51.

The Borrower irrevocably authorizes and directs the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Governmental Lender Notes in an amount related to the amount of the Borrower Loan.

(n) Compliance with Tax Certificate. The Borrower shall execute, deliver and comply with the provisions of the Tax Certificate. In the event of any conflict as between the provisions of this Borrower Loan Agreement and the Tax Certificate, the requirements of the Tax Certificate shall control.

#### Section 8.52 Payment of Rebate.

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Funding Loan or the Governmental Lender Notes in accordance with Section 148(f) of the Code including:

(i) *Delivery of Documents and Money on Computation Dates*. The Borrower will deliver to the Funding Lender, within 55 days after each Computation Date:

(A) with a copy to the Governmental Lender, a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(1) of the Treasury Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(f)(1) of the Treasury Regulations); and

(C) with a copy to the Governmental Lender, an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) *Correction of Underpayments.* If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 8.52 of an amount described in Section 8.52(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Treasury Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Funding Lender (for deposit to the Rebate Fund) and cause the Funding Lender to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Treasury Regulations, within 175 days after any discovery or notice and (2) deliver to the Funding Lender an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Treasury Regulations, the Borrower shall take such steps as are necessary to prevent the Funding Loan from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) *Records.* The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 8.52 for at least six years after the later of the final maturity of the Funding Loan or the date the Funding Loan is retired in full.

(iv) *Costs.* The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) *No Diversion of Rebatable Arbitrage.* The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) *Modification of Requirements.* If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 8.52, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) Rebate Fund. The Funding Lender shall establish and hold a separate fund designated as the "Rebate Fund." The Funding Lender shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Funding Lender by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

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

(d) All payments to the United States of America pursuant to this Section 8.52 shall be made by the Funding Lender for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Funding Lender by the Borrower or the Rebate Analyst as set forth in this Section 8.52).

(e) The Borrower shall preserve all statements, forms and explanations received delivered pursuant this Section 8.52 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

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

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

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 8.52 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender.

Section 8.53 Covenants Under Funding Loan Agreement. The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

Section 8.54 Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 8.55 Continuing Disclosure Agreement. The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement

Section 8.56 Replacement Reserve. [At or prior to the date of the funding of the Additional Capital Contribution (as defined in the Partnership Agreement), the Borrower shall establish and maintain a segregated replacement reserve with the Funding Lender that shall be available for capital expenditures for repairs and replacement necessary to maintain the Project in safe, decent and habitable condition and other purposes (each a "Permitted Purpose") permitted under the Partnership Agreement (such account and all replacements and substitutions thereof are referred to as the "Replacement Reserve"). The Replacement Reserve shall be subject to the control and first priority security interest of the Funding Lender and shall be used solely for the Permitted Purposes, provided, however, absent the occurrence of an Event of Default, Borrower may make disbursements from the Replacement Reserve without the prior approval of the Funding Lender. The Borrower shall fund the Replacement Reserve (i) in an initial amount of \$0.00 as of the date funding of the Additional Capital Contribution, and (ii) thereafter, in an amount equal to no less than \$29,400.00 annually, with 1/12 of said amount to be funded monthly. In the event the Equity Investor is not Union Bank, N.A. or an Affiliate (as defined in the Partnership Agreement), the Borrower shall not make any disbursement of proceeds from the Replacement Reserve for expenditures that are in excess of \$20,000.00 without the prior approval of the Funding Lender]. After the occurrence of an Event of Default, the Funding Lender shall have the right to review and approve disbursements from the Replacement Reserve. Notwithstanding the foregoing, the Funding Lender shall have no duty to inquire into or investigate whether any withdrawal that the Borrower makes from the Replacement Reserve is for a Permitted Purpose and shall have no liability with respect to any withdrawal the Borrower makes from the Replacement Reserve that is not for a Permitted Purpose.

## ARTICLE VIIIA

### NEGATIVE COVENANTS

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

Section 8A.1 Management Agreement. Without first obtaining the Funding Lender's prior Written Consent, enter into a management agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the management agreement or otherwise replace the Manager or enter into any other management agreement unless such termination of the management agreement is required pursuant to the Partnership Agreement; (ii) reduce or consent to the reduction of the term of the management agreement; (iii) increase or consent to the increase of the amount of any charges under the management agreement; (iv) otherwise modify, change, supplement, alter or amend

in any material respect, or waive or release in any material respect any of its rights and remedies under, the management agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the management agreement (or any successor management agreement) if such default permits the Manager to terminate the management agreement (or such successor management agreement).

Section 8A.2 Dissolution. Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

Section 8A.3 Change in Business or Operation of Property. Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

Section 8A.4 Debt Cancellation. Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

Section 8A.5 Assets. Purchase or own any real property or personal property incidental thereto other than the Project.

Section 8A.6 Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Trust Deed, nor transfer any material Project Agreements or Licenses required for the operation of the Project.

Section 8A.7 Debt. Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, and (iv) trade payables incurred in the ordinary course of business.

Section 8A.8 Assignment of Rights. Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

Section 8A.9 Principal Place of Business. Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender and Governmental Lender.

Section 8A.10 Partnership Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel,



modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Trust Deed.

Section 8A.11 No Hedging Arrangements. Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

Section 8A.12 Loans and Investments; Distributions; Related Party Payments.

(a) Without the prior Written Consent of Funding Lender in each instance, Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Affiliate of Borrower or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Affiliate of Borrower or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Trust Deed and subject to the limitations set forth in Section \_\_\_\_ hereof).

(b) Disbursements for fees and expenses of any Affiliate of Borrower and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any "deferred developer fees" shall be made prior to the Conversion Date [except as permitted by the developer fee schedule approved by the Funding Lender].

Section 8A.13 Amendment of Related Documents or CC&R's. Without the prior Written Consent of Funding Lender in each instance, except as provided herein, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the related documents or any of the CC&R's (including, without limitation, those contained in the Borrower Loan Agreement, any architect's agreement or engineer's contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section \_\_\_\_), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

Section 8A.14 Personal Property. Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess

any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender's prior Written Consent; provided, however, that this Section 8A.14 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

Section 8A.15 Fiscal Year. Without Funding Lender's Written Consent, which shall not be unreasonably withheld, neither Borrower nor General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

## ARTICLE IX

### EVENTS OF DEFAULT

Each of the following shall constitute an "Event of Default" hereunder (including, if Borrower consists of more than one person, the occurrence of any of such events with respect to any one or more of said persons):

Section 9.1 The failure of Borrower to make any payment of principal, interest or other charges under any of the Borrower Notes as and when due.

Section 9.2 The failure of Borrower or any Guarantor to comply with any covenant contained in this Borrower Loan Agreement or any other Borrower Loan Document which calls for the payment of money, if such payment is not received by the Funding Lender within ten (10) days after written notice from the Funding Lender.

Section 9.3 The breach or default of any other covenant, agreement or undertaking of Borrower or Guarantor contained in this Borrower Loan Agreement or any other Borrower Loan Document, and the continuance of such breach for a period of thirty (30) days after written notice thereof to Borrower; provided that, so long as the Borrower has commenced to cure such breach or default within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Borrower is diligently pursuing such cure to the Funding Lender's reasonable satisfaction, then the Borrower shall have an additional period of time as reasonably necessary (such additional period not to exceed forty-five (45) days unless extended in writing by the Funding Lender) within which to cure such default; provided, however, that if a different notice or cure period is specified under any provision of the Borrower Loan Documents, the specific provision shall control; provided, however, that nothing contained herein shall extend the time for payments of principal, interest and charges in accordance with the terms and provisions of the Borrower Notes.

Section 9.4 The condemnation, seizure, or appropriation of (or the occurrence of an uninsured casualty) that materially impairs, as determined by Funding Lender in its discretion, the security interest of Funding Lender in the Property or Improvements.

Section 9.5 The failure of Borrower to make any deposit of Borrower's Funds into the Borrower's Funds Account as and when required by this Borrower Loan Agreement after written demand by the Funding Lender.

Section 9.6 Any Change Order or material deviation of the work of construction from the Plans and Specifications which is not authorized by the Funding Lender if such authorization is required under the terms of this Borrower Loan Agreement, or the use of defective workmanship or materials in the construction of the Improvements, if such defective workmanship or materials remain in the construction of the Improvements beyond fifteen (15) days after written notice from Funding Lender.

Section 9.7 The service by the obligee upon the Funding Lender of a demand under any Set-Aside Letter.

Section 9.8 The cessation (other than a cessation caused by the occurrence of an event which expressly permits delayed completion under this Borrower Loan Agreement) of the work of construction prior to completion of the Improvements for a continuous period of ten (10) business days or more.

Section 9.9 Any person obtains an order or decree in any court of competent jurisdiction enjoining the construction of the Improvements or enjoining or prohibiting Borrower or the Funding Lender or either of them from performing this Borrower Loan Agreement, and such proceedings are not discontinued and such decree is not vacated within twenty (20) days after the granting thereof.

Section 9.10 Borrower neglects, fails or refuses to keep in full force and effect any permit or approval with respect to the construction of the Improvements or the prohibition, stoppage, or delaying (in any manner) of the construction of any of the Improvements in violation of any of the Borrower Loan Documents, including, without limitation, any Governmental Authority's order, directive or decree which has such effect.

Section 9.11 The curtailment in availability to the Property or Improvements of utilities or other public services necessary for the full occupancy and utilization of any of the Improvements.

Section 9.12 Any misappropriation of any of the Borrower's Funds or Borrower Loan proceeds disbursed pursuant to this Borrower Loan Agreement or the use of any Borrower's Funds or Borrower Loan proceeds for any purpose other than payment of costs approved by the Funding Lender pursuant to this Borrower Loan Agreement.

Section 9.13 If any bonded stop notice or notice to withhold in connection with the Borrower Loan is served on the Funding Lender in accordance with the provisions of the law of the state in which the Property is located, unless within ten (10) days of the receipt of such notice the claim set forth therein discharged or, if the amount claimed is disputed in good faith by Borrower or General Contractor, an adequate corporate surety bond or equivalent acceptable to the Funding Lender is filed with the Funder Lender in the manner provided by law and is legally sufficient to release such stop notice or notice to withhold.

Section 9.14 (a) The imposition, voluntary or involuntary, of any lien or encumbrance upon the Property without the Funder Lender's written consent, or (b) the filing of any

mechanics lien or similar claim under the mechanics lien laws of the state in which the Property is located, unless an adequate surety bond is provided and such lien is accordingly released in the manner provided by law within twenty (20) days of the filing of such lien or claim.

Section 9.15 Any breach, misrepresentation or other default by Borrower (other than as provided in the preceding Sections 9.1 through 9.14), or by any other Obligor under any of the Borrower Loan Documents, if such failure continues beyond the period of grace, if any, specified therein.

Section 9.16 (a) The insolvency of any Obligor or the failure of any Obligor generally to pay such Obligor's debts as such debts become due; (b) the commencement as to any Obligor of any voluntary or involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, arrangement, debt adjustment or debtor relief, except in case of involuntary proceedings if such proceedings are dismissed within sixty (60) days after the filing thereof; (c) the assignment by any Obligor for the benefit of such Obligor's creditors; (d) the appointment, or commencement of any proceedings for the appointment, of a receiver, trustee, custodian or similar official for all or substantially all of any Obligor's property; (e) the commencement of any proceeding for the dissolution or liquidation of any Obligor; or (f) the termination of existence or death of any Obligor.

Section 9.17 The revocation of any guaranty or subordination agreement given in connection with the Borrower Notes.

Section 9.18 The issuance against any Obligor, or the property of any Obligor, of any writ of attachment, execution, or other judicial lien which is not discharged within twenty (20) days.

Section 9.19 The deterioration of the financial condition of any Obligor which results in Funding Lender deeming itself, in good faith, insecure and such condition continues for a period of thirty (30) consecutive days after written notice from Funding Lender.

Section 9.20 [Reserved.]

Section 9.21 Borrower's failure to comply with Section 3110.5 of the California Civil Code.

Section 9.22 Failure by the Borrower to Substantially Complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

Section 9.23 Failure by Borrower to complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date; and

Section 9.24 Failure by Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date, or, if applicable, the Extended Outside Conversion Date.

## ARTICLE X

### REMEDIES

If any of the Events of Default set forth in Article IX occur, then Funding Lender, in addition to its other rights hereunder, may at its option, without prior demand or notice may do any or all of the following:

Section 10.1 Terminate the obligation of Funding Lender to make Disbursements hereunder.

Section 10.2 Declare the principal of and all accrued and unpaid interest on Borrower Notes to be immediately due and payable.

Section 10.3 Notwithstanding the exercise of either one or both of the remedies described in Sections 10.1 and 10.2 hereof, the Funding Lender may make any Disbursements after the happening of any one or more of said Events of Default without thereby waiving its right to demand payment of the Borrower Notes and without liability to make any other or further Disbursements.

Section 10.4 Proceed as authorized by law to satisfy the indebtedness of Borrower to the Funding Lender and, in that regard, Funding Lender shall be entitled to all of the rights, privileges and benefits contained in the Trust Deed and Security Agreements or other Borrower Loan Documents.

Section 10.5 Take possession of the Property and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans and Specifications in which event expenditures therefor shall be deemed an additional loan to Borrower, payable on demand, bearing interest at the Default Interest rate and secured by the Trust Deed and other Security Agreements.

Section 10.6 Take possession of all funds and deposits of Borrower on hand or deposited in any account at Funding Lender or any branch at Funding Lender and apply said funds in such order at priority as Funding Lender may elect in connection with the obligations of Borrower, hereunder, under the Borrower Notes, the Trust Deed and the other Borrower Loan Documents.

Section 10.7 Continue in the ordinary course of business, the leasing of the Project and otherwise to do any or all acts concerning the Property, the Project or the Improvements that Borrower might do in its own behalf in the ordinary course of owning, operating, maintaining and marketing the Project as a going concern.

Section 10.8 Demand from Borrower, and upon such demand Borrower shall pay to the Funding Lender, in addition to all other amounts payable by Borrower under the Borrower Loan Documents, an amount equal to the maximum aggregate unfunded potential liability of the Funding Lender under all Set-Aside Letters then outstanding.

Section 10.9 Exercise any and all other remedies that may be available to Lender under the Borrower Loan Documents or applicable law.

WHETHER OR NOT THE FUNDING LENDER ELECTS TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO IT IN THE EVENT OF DEFAULT, THE FUNDING LENDER SHALL NOT BE LIABLE FOR THE CONSTRUCTION OF OR FAILURE TO CONSTRUCT OR COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR PAYMENT OF ANY EXPENSE INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO THE FUNDING LENDER OR FOR THE CONSTRUCTION OR COMPLETION OF THE IMPROVEMENTS OR FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OTHER OBLIGATION OF BORROWER.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor 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.

## ARTICLE XI

### POWER OF ATTORNEY

In the event of an Event of Default as defined in Article IX hereof, Borrower hereby constitutes and appoints the Funding Lender its true and lawful attorney in fact with the power and authority, including full power of substitution, as follows:

Section 11.1 To take possession of the Property and complete the Improvements.

Section 11.2 To use any of Borrower's Funds and any funds which may remain undisbursed under the Borrower Loan for the purpose of completing the Improvements and for other costs related thereto.

Section 11.3 To make such additions and changes and corrections in the Plans and Specifications as may be necessary or desirable as Funding Lender in its sole discretion deems proper to complete the Improvements.

Section 11.4 To employ such contractors, subcontractors and agents, architects and inspectors as are required to complete the Improvements.

Section 11.5 To employ guards to protect the Property and Improvements from injury.

Section 11.6 To pay, settle or compromise all existing bills and claims against Borrower's Funds or any funds which may remain undisbursed under the Borrower Loan or as may be necessary or desirable, as the Funding Lender in its sole discretion deems proper, for the completion of the Improvements or for protection or clearance of title to the Property and Personal Property or for the protection of the Funding Lender's interest with respect thereto.

Section 11.7 To prosecute and defend all actions and proceedings in connection with the construction of the Improvements.

Section 11.8 As the Funding Lender in its sole discretion deems proper, to execute, acknowledge, and deliver all instruments and documents in the name of Borrower which may be necessary or desirable to do and to do any and every act with respect to the construction and leasing of the Improvements which Borrower might do on his own behalf.

This Power of Attorney is a power coupled with an interest and cannot be revoked and any costs or expenses incurred by the Funding Lender in connection with any acts by the Funding Lender under or pursuant to this Article XI shall be at the cost and expense of Borrower, repayable on demand by Borrower to the Funding Lender with interest thereon at the Default Interest rate, with any such advances made or costs or expenses incurred by the Funding Lender to be secured by the Trust Deed and the Security Agreements.

## ARTICLE XII

### SECURITY INTEREST

[Section 12.1 Security Interest. Borrower does hereby give and grant to the Funding Lender a security interest in all funds and deposits of Borrower on deposit at Funding Lender or any branch of the Funding Lender, as additional security for the obligations of Borrower contained in the Borrower Notes, Trust Deed or the Security Agreements.]

## ARTICLE XIII

### FINANCIAL STATEMENTS

Section 13.1 Financial Statements. [Borrower shall] [and Borrower shall cause each [Obligor, inclusive of each] Guarantor to] provide the Funding Lender an income statement, balance sheet, and statement of retained earnings with supporting schedules ("Financial Statements"), as follows:

(a) Following an Event of Default and the request of Funding Lender, within forty-five (45) days after the close of each quarter, except for the final quarter of each year, Borrower's Financial Statement as of the close of such period;

(b) Within one hundred twenty (120) days after the close of each fiscal year, a copy of Borrower's annual Financial Statement;

(c) Within one hundred twenty (120) days after the close of each fiscal year, a copy of each Guarantor's annual Financial Statement;

(d) Within thirty (30) days after filing, a copy of Borrower's [and each Guarantor's] most recently filed federal income tax return with all accompanying schedules, if requested by Funding Lender in writing;

(e) Within thirty (30) days after written request by Funding Lender, the Financial Statement of all affiliates and subsidiaries of Borrower [and each Guarantor];

(f) Following an Event of Default and the request of Funding Lender, within thirty (30) days after the close of each operating quarter, for the Property, a quarterly operating statement with all income and expenses of the Property and a current rent roll, and if retail property, a schedule of gross sales ("Operating Statements");

(g) Within one hundred twenty (120) days after the close of the operating year for the Property, annual Operating Statements; and

(h) Promptly, upon request, provide any other financial information requested by Funding Lender and permit Funding Lender at any reasonable time to inspect, audit, and examine the books and records of Borrower and each Obligor, inclusive of each Guarantor, and make copies thereof.

#### ARTICLE XIV

##### SIGNS AND CONSENT TO USE BORROWER INFORMATION ON OTHER ADVERTISING

Section 14.1 Signs and Consent to Use Borrower Information on Other Advertising. Borrower hereby grants the Funding Lender the right, during the construction period for the Project, to erect or cause to be erected Funding Lender's sign or signs in size and location desired by the Funding Lender on the Property so long as such sign or signs do not interfere with the reasonable construction of the Improvements. Borrower will and will cause General Contractor and other contractors and subcontractors to exercise due care to protect said sign or signs from damage. Subject to the consent of Resources for Community Development, the Borrower also hereby grants to the Funding Lender permission to use Borrower's name and/or logo and financial details concerning this transaction, including the size of the transaction and the identities of other lenders involved in this transaction, in one or more tombstone advertisements to be placed in various types of advertising, including without limitation the internet, the financial press, and on posters to be created by the Funding Lender for display in the Funding Lender's offices. Borrower may rescind the permission granted herein upon reasonable prior written notice to the Funding Lender.

#### ARTICLE XIVA

##### SPECIAL PROVISIONS

###### Section 14A.1 Sale of Notes and Secondary Market Transaction.

Section 14A.1.1 Cooperation. Subject to the restrictions of Section 2.4(b) of the Funding Loan Agreement, at the Funding Lender's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender in



connection with one or more sales or assignments of all or a portion of the Funding Loan and/or Borrower Loan or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Funding Loan and/or Borrower Loan (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Funding Lender, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

Section 14A.1.2 Use of Information. The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 14A.1.1(c) hereof, with the Funding Lender in updating the Provided

Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

Section 14A.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents. In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

Section 14A.1.4 Borrower Indemnity Regarding Filings. In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify Funding Lender and the underwriter group for any securities (the "Underwriter Group") for any Liabilities to which Funding Lender or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

Section 14A.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Sections 14A.1.3 and 14A.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies

the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 14A.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

Section 14A.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 14A.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 14A.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE XV

### GENERAL CONDITIONS

Section 15.1 No Waiver. No delay or omission of Funding Lender in exercising any right or power arising from any default by Borrower shall be construed as a waiver of such default or as an acquiescence therein, nor shall any single or partial exercise thereof preclude any further exercise thereof. The Funding Lender may, at its option, waive any of the conditions herein and any such waiver shall not be deemed a waiver of Funding Lender's rights hereunder but shall be deemed to have been made in pursuance of this Borrower Loan Agreement and not in modification thereof. No waiver of any Event of Default shall be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent Event of Default.

Section 15.2 No Third Party Benefits. This Borrower Loan Agreement is made for the sole benefit of Borrower, Governmental Lender and Funding Lender, their successors and assigns and no other person or persons shall have any rights or remedies under or by reason of this Borrower Loan Agreement nor shall the Governmental Lender or Funding Lender owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, to apply any undisbursed portion of the Borrower Loan

to the payment of any such claim or to exercise any right or power of the Governmental Lender or Funding Lender hereunder or arising from any default by Borrower.

Section 15.3 Notice. All notices, demand or other communication required or allowed to be given hereunder to either party shall be given in writing (at the address set forth below their respective signatures, below) by any of the following means: (a) personal service; (b) electronic communication; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to subsection (c) shall be deemed received on the business day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received forty-eight (48) hours following deposit into the mail. It is understood and agreed that each of the parties will use reasonable efforts to send copies of any notices marked "With a copy to"; provided, however, that failure to deliver such copy or copies shall have no consequences whatsoever to the effectiveness of any notice made to the other party.

Section 15.4 Death or Dissolution of Partner. If Borrower, Guarantor or any Completion Guarantor is a natural person or is organized as a partnership or joint venture, upon the death (with respect to a natural person) or dissolution (with respect to a legal entity) of any of the individuals, general partners or joint venturers comprising Borrower, Guarantor or Completion Guarantor prior to the completion of the Improvements or prior to the disbursement of the balance of Borrower Loan proceeds, the Funding Lender may cease disbursements hereunder (unless, solely in the case of a legal entity, the organizational documents provide for and the entity in fact does continue after such death or dissolution).

Section 15.5 Indemnity. Borrower agrees to indemnify, defend the Funding Lender against, and hold the Funding Lender harmless from, any and all losses, damages (whether general or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including attorney's fees) which Funding Lender may suffer or incur as a direct or indirect consequence of: (i) the Funding Lender's performance of this Borrower Loan Agreement or any of the Borrower Loan Documents, including, without limitation, the Funding Lender's exercise or failure to exercise any rights, remedies or powers in connection with this Borrower Loan Agreement or any of the Borrower Loan Documents; (ii) Borrower's failure to perform any of Borrower's obligations as and when required by this Borrower Loan Agreement or any of the Borrower Loan Documents, including, without limitation, any failure, at any time, of any representation or warranty of Borrower to be true and correct and any failure by Borrower to satisfy any condition; (iii) any claim or cause of action of any kind by any person or entity to the effect that the Funding Lender is in any way responsible or liable for any act or omission by Borrower, whether on account of any theory of derivative liability or otherwise; (iv) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect or other person or entity, except the Funding Lender, with respect to any of the Property or Improvements; (v) any claim or cause of action of any kind by any person or entity which would have the effect of denying the Funding Lender the full benefit or protection of any provision of this Borrower Loan Agreement or the Borrower Loan Documents; or (vi) any act or omission by Borrower or any

other party with respect to the Property or the Improvements or otherwise arising out of or relating to the Property or Improvements in any manner. The Funding Lender's rights of indemnity shall not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the Funding Lender's conduct is active, passive or subject to any other classification or that the Funding Lender is directly or indirectly responsible under any theory of any kind, character or nature for any act or omission by Borrower or any other person or entity, except the Funding Lender. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify the Funding Lender with respect to any willful misconduct or act of gross negligence which the Funding Lender is personally determined by the judgment of a court of competent jurisdiction (sustained on appeal, if any) to have committed. Borrower shall pay any indebtedness arising under said indemnity to the Funding Lender immediately upon demand by the Funding Lender together with interest thereon from the date such indebtedness arises until paid at the greatest effective rate of interest specified in the Borrower Notes and which is applicable on or after the maturity or acceleration of the Borrower Notes. Borrower's duty to indemnify the Funding Lender shall survive the release and cancellation of the Borrower Notes and the release and reconveyance or partial release and reconveyance of the Trust Deed.

Section 15.6 Further Assurances; Authorization. Borrower shall, upon the request of the Funding Lender, at Borrower's expense, execute, acknowledge and deliver such further instruments (including, without limit, a declaration of no offset) and perform such other acts as may be necessary, desirable or proper (as determined by the Funding Lender) to carry out the purposes of the Borrower Loan Documents or to perfect and preserve the lien or charge of the Borrower Loan Documents.

Section 15.7 Form of Documents. The form and substance of all documents, instruments, papers and forms of evidence to be delivered to the Funding Lender under the terms of any of the Borrower Loan Documents shall be subject to the approval of the Funding Lender. No document or instrument delivered to the Funding Lender or to be delivered to the Funding Lender, or which is subject to the approval of the Funding Lender under the terms of any of the Borrower Loan Documents, shall be amended, modified, superseded or terminated in any respect whatsoever without the Funding Lender's prior written approval.

Section 15.8 Time Is of the Essence. Time is hereby declared to be of the essence of this Borrower Loan Agreement and of every part hereof.

Section 15.9 Supplement to Security Agreements. The provisions of this Borrower Loan Agreement are not intended to supersede the provisions of the Trust Deed or the Security Agreements but shall be construed as supplemental thereto.

Section 15.10 Joint and Several Obligations. If Borrower consists of more than one person acting in their individual capacities or as general partners in a partnership (excluding, however, any limited partner or member of a limited liability company except insofar as such person may execute an express guaranty or other agreement to be liable), the obligations of Borrower shall be the joint and several obligations of all such persons, and any married person who executes this Borrower Loan Agreement agrees that recourse may be had against his or her separate property for satisfaction of his or her obligations hereunder. When the context and

construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa.

Section 15.11 Authority to File Notices. Borrower hereby appoints and authorizes the Funding Lender, as its agent (but without any obligation on the part of the Funding Lender to do so), to record any notices of completion, cessation of labor and other notices that the Funding Lender deems necessary to record to protect any interest of the Funding Lender under the provisions of this Borrower Loan Agreement, the Borrower Notes, the Trust Deed or any of the Security Agreements. This agency is a power coupled with an interest and is not revocable.

Section 15.12 Actions. The Funding Lender shall have the right to commence, appear in or defend any action or proceeding purporting to affect the Property, Improvements, Borrower Loan Documents or the rights, duties or liabilities of Borrower or the Funding Lender under any of the Borrower Loan Documents. In exercising such right, the Funding Lender may incur and pay costs and expenses including, without limit, attorneys' fees and court costs. Borrower agrees to pay to the Funding Lender upon demand all such expenses incurred or paid by the Funding Lender together with interest, at the greatest effective rate of interest specified in the Borrower Notes, from the date such expenses were incurred or paid by the Funding Lender. Until repaid, such amounts shall have the security afforded disbursements under the Borrower Notes.

Section 15.13 Nonliability of the Funding Lender or Governmental Lender. The relationship of Borrower, and the Funding Lender and the Governmental Lender, under the Borrower Loan Documents is, and shall at all times remain, solely that of the Funding Lender, Governmental Lender and Borrower, and neither the Governmental Lender nor the Funding Lender undertakes or assumes any responsibility or duty to Borrower or to any third party with respect to the Property, Improvements, or Borrower Loan, except as expressly provided in the Borrower Loan Documents. Neither the Governmental Lender nor the Funding Lender shall be liable in any way for any failure to perform or delay in performing the whole or any part of the Borrower Loan Documents by the Governmental Lender or the Funding Lender and the Funding Lender and the Governmental Lender may suspend or terminate all or any portion of the Funding Lender's or the Governmental Lender's, respectively, obligations under the Borrower Loan Documents if such delay or failure by the Funding Lender results directly or indirectly from, or such suspension or termination by the Funding Lender is based upon, the action or inaction, or purported action, of any governmental or local authority, or any war (whether declared or not), rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of the Funding Lender deemed probable) or any act of God, or any other cause or event beyond the control of the Funding Lender.

Section 15.14 Attorney's Fees. If any legal action or proceeding is brought by either Borrower, the Governmental Lender or the Funding Lender to enforce a provision of the Borrower Loan Documents, the unsuccessful party in such action or proceeding, whether or not such action or proceeding is settled or prosecuted to final judgment, shall pay all of the attorney's fees and costs incurred by the prevailing party in the action, including but not limited to any attorneys' fees incurred as a result of an appeal of the action. If Borrower shall become subject to any case or proceeding under the bankruptcy and reorganization laws of the United State, as amended or recodified from time to time, Borrower shall pay to the Governmental

Lender and the Funding Lender on demand all attorneys' fees, costs and expenses which the Governmental Lender and the Funding Lender, respectively, may incur to obtain relief from any legal provision which delays or otherwise impairs the Governmental Lender's or the Funding Lender's, respectively, exercise of any right or remedy under any of the Borrower Loan Documents or for Funding Lender to obtain adequate protection for any of Funding Lender's rights or collateral.

Section 15.15 Assignment. Borrower shall not assign any of the Borrower Loan Documents or any of Borrower's interest in any monies due or to become due under any of the Borrower Loan Documents or convey or encumber any of the Property, Improvements, or any personal property, goods, or fixtures now or hereafter located at the Property or the Improvements without the prior written consent of the Funding Lender. Any such assignment made without such consent shall be void. Borrower recognizes that this is not an ordinary loan and that the Funding Lender would not make the Funding Loan except in reliance on Borrower's expertise, reputation and the Funding Lender's knowledge of Borrower, and that this Borrower Loan Agreement is more in the nature of a personal service contract than a standard loan where the Funding Lender would rely on security which already exists. In this instance the Improvements are not constructed and the Funding Lender is relying heavily on Borrower's expertise and prior experience to develop the Improvements in accordance with the terms of the Borrower Loan Documents.

Section 15.16 Sale of Participations. The Funding Lender shall have the right to sell participation interests in the Borrower Loan or to assign and transfer the Borrower Loan and/or the Funding Loan to any other persons or entities subject to the provisions of Section 2.4(b) of the Funding Loan Agreement, without the consent of or notice to Borrower. The Funding Lender may disclose to any participants or assignees or prospective participants or assignees any information or other data or material in the Funding Lender's possession relating to Borrower, any Guarantor, the Borrower Loan, the Property, the Project, and/or the Improvements, including the construction thereof, without the consent of or notice to Borrower. In the event the Funding Lender shall participate or assign all or any part of the Borrower Loan or the Funding Loan, the designation "Funding Lender" herein shall include all participants and assigns. Unless written notice to Borrower to the contrary is given by the original Funding Lender, Borrower shall deal and communicate solely with, and rely solely upon communications from, the original Funding Lender, and Borrower shall not be entitled to rely upon and shall not accept any notice or other communication concerning the Borrower Loan from any such participant or assignee. Upon an entire assignment by the Funding Lender to one or more assignees, the Funding Lender shall be relieved of any further obligations or liabilities hereunder and Borrower shall look solely to such assignee(s) for performance of the Funding Lender's duties hereunder.

Section 15.17 Rules for Construction. A reference to any of the Borrower Loan Documents shall include all or any of the provisions of the Borrower Loan Documents. A reference to the Property or Improvements shall be a reference to all or any parts of the Property or Improvements. A reference to the Funding Lender shall include the Funding Lender's agents.

Section 15.18 Severability. If any provision of the Borrower Loan Documents shall for any reason be determined by a court of competent jurisdiction, and sustained on appeal, if any, to be unenforceable by the Funding Lender in any respect, such unenforceability shall not affect any other provisions thereof, and the Borrower Loan Documents shall be construed as if such unenforceable provision had not been contained therein; provided, if any provision of the Borrower Loan Documents shall be unenforceable by reason of a final judgment of a court of competent jurisdiction based upon such court's ruling, and sustained on appeal, if any, that said provision is unenforceable because of the unenforceable degree of magnitude of the obligation imposed thereby, said unenforceable degree of magnitude of the obligation shall be reduced in magnitude or degree by the minimum amount necessary in order to provide the maximum degree or magnitude of rights which are enforceable by the Funding Lender, and the Borrower Loan Documents shall be automatically and retroactively amended accordingly to contain such maximum or magnitude of said obligation which is enforceable by the Funding Lender, rather than the more burdensome but unenforceable original obligation. As used herein, "unenforceable" is used in the broadest and most comprehensive sense and includes the concepts of void and voidable.

Section 15.19 Tax Shelter Disclaimers and Waivers. Neither Borrower, any Guarantor, any other Obligor, nor any subsidiary of any of the foregoing intends to treat the Borrower Loan or the transactions contemplated by this Borrower Loan Agreement and the other Borrower Loan Documents as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). If Borrower or any other Obligor determines to take any action inconsistent with such intention, Borrower will promptly notify Funding Lender thereof. If Borrower so notifies the Funding Lender, Borrower acknowledges that the Funding Lender may treat the Borrower Loan as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and in such event the Funding Lender will maintain the lists and other records, including the identity of the applicable party to the Borrower Loan as required by such Treasury Regulation. Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, the parties hereto acknowledge and agree that (a) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the parties to the tax treatment and tax structure of the transactions contemplated by the Borrower Loan Documents (and any related transactions or arrangements), and (b) each party (and each of its employees, representatives, or other agents) may disclose to any and all parties as required, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by the Borrower Loan Documents and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that each party recognizes that the privilege each has to maintain, in its sole discretion, with regard to the confidentiality of a communication relating to the transactions contemplated by the Borrower Loan Documents, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code, is not intended to be affected by the foregoing.

Section 15.20 Heirs, Successors and Assigns. The terms of this Borrower Loan Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of



the parties; provided however, that this Section shall not be deemed a waiver of the provisions contained in Section 15.15 or, in any other restriction on transfer or assignment with respect to interests in the Borrower Loan, the Property or the Borrower contained in any of the Borrower Loan Documents.

Section 15.21 Headings. All headings appearing in this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

Section 15.22 Interpretation. This Borrower Loan Agreement and the Borrower Loan Documents shall be governed by, and construed in accordance with, the laws of the State, except to the extent preempted by federal law. In any action brought or arising out of this Borrower Loan Agreement or the Borrower Loan Documents, Borrower and the general partners and joint venturers of Borrower hereby consent to the jurisdiction of any Federal or State Court within the State and also consent to the service of process by any means authorized by the laws of the State or by federal law.

Section 15.23 WAIVER OF JURY TRIAL. THE BORROWER, THE GOVERNMENTAL LENDER AND THE FUNDING LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, AND THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION RELATED TO THIS BORROWER LOAN AGREEMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR TRANSACTION BETWEEN THE PARTIES.

Section 15.24 Judicial Reference Provision. In the event the above Jury Trial Waiver is unenforceable, the parties elect to proceed under this Judicial Reference Provision. With the exception of the items specified below, any controversy, dispute or claim between the parties relating to this Borrower Loan Agreement or any other document, instrument or transaction between the parties (each, a "Claim"), will be resolved by a reference proceeding in the State pursuant to [Sections 638 et seq. of the California Code of Civil Procedure], or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to reference. Venue for the reference will be the Superior Court in the County where real property involved in the action, if any, is located, or in a County where venue is otherwise appropriate under law (the "Court"). The following matters shall not be subject to reference: (i) nonjudicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including without limitation set-off), (iii) appointment of a receiver, and (iv) temporary, provisional or ancillary remedies (including without limitation writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). The exercise of, or opposition to, any of the above does not waive the right to a reference hereunder.

The referee shall be selected by agreement of the parties. If the parties do not agree, upon request of any party a referee shall be selected by the Presiding Judge of the Court. The referee shall determine all issues in accordance with existing case law and statutory law of the State, including without limitation the rules of evidence applicable to proceedings at law. The referee is empowered to enter equitable and legal relief, and rule on any motion which would

be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision, and pursuant to CCP §644 the referee's decision shall be entered by the Court as a judgment or order in the same manner as if tried by the Court. The final judgment or order from any decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial if granted, will be a reference hereunder. AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, EACH PARTY AGREES THAT ALL CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT A JURY.

Section 15.25 Integration. This Borrower Loan Agreement contains or expressly incorporates by reference the entire and exclusive agreement of the parties with respect to the matters contemplated herein and supersedes all prior negotiations related thereto, and this Borrower Loan Agreement shall not be amended or modified in any way except by a written instrument which is executed by all parties hereto. Borrower acknowledges and represents that the Borrower Loan Documents and any documents or instruments referenced therein are the only agreements of the parties with respect to the subject matter of the Borrower Loan and that the Funding Lender has made no other agreement or representation to Borrower, whether oral or written.

Section 15.26 Funding Lender Consents. With respect to any matter requiring the Funding Lender's consent hereunder, Borrower shall direct written request for such consent to the Funding Lender pursuant to Section 15.3 above, including such information as Borrower may deem pertinent to the Funding Lender's decision. From time-to-time, the Funding Lender may designate a specific individual to whom such requests shall be directed. No failure of the Funding Lender to respond to a request shall be deemed a consent to the request. No response by the Funding Lender shall be effective as a consent unless the same is in writing executed by a duly authorized officer of the Funding Lender.

Section 15.27 Counterparts. This Borrower Loan Agreement may be executed in one or more counterparts, each of which together shall constitute one and the same instrument.

Section 15.28 Recitals. The Recitals contained herein are true and correct and are incorporated into this Borrower Loan Agreement.

Section 15.29 California Waiver of Civil Code Section 2822. Borrower hereby waives any right under California Civil Code Section 2822 or any successor sections to designate the portion of the obligations under the Borrower Loan Documents that are to be satisfied by any payment or other satisfaction by Borrower. Any such payment or other satisfaction shall not affect in any manner the obligations of Guarantor under the Guaranty.

Section 15.30 Survival. The representations, warranties and covenants herein shall survive the disbursement of the Borrower Loan and shall remain in force and effect until the Borrower Loan is paid in full.

## ARTICLE XVI

### SPECIAL CONDITIONS

Section 16.1 Special Conditions. The special conditions of the Borrower Loan, if any, are set forth in EXHIBIT F attached hereto and made a part hereof.

## ARTICLE XVII

### LIMITATIONS ON LIABILITY

Section 17.1 Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Notes.

Section 17.2 Limitation on Liability of Governmental Lender. The Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the Funding Loan, except from moneys and assets received by the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, nor the faith and credit of the Governmental Lender is pledged to the payment of the principal (or prepayment price) of or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement. No owner or owners of any of the Governmental Lender Notes shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision thereof or of the Governmental Lender for the payment of the Governmental Lender Notes or the Funding Loan, nor to enforce the payment of the Governmental Lender Notes or the Funding Loan against any property of the State or any such political subdivision thereof or of the Governmental Lender except as provided in the Funding Loan Agreement.

It is recognized that notwithstanding any other provision of this Borrower Loan Agreement, and except for the Pledged Revenues, the Trust Deed and certain funds pledged under the Funding Loan Agreement, none of the Borrower, the Funding Lender, the owners of the Governmental Lender Notes or the Servicer shall look to the Governmental Lender for damages suffered by the Borrower, the Funding Lender, the owners of the Governmental Lender Notes or the Servicer as a result of the Governmental Lender's performance, failure to perform or insufficient performance of any covenant, undertaking or obligation under this Borrower Loan Agreement or any of the other Funding Loan Documents or the Borrower Loan Documents, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, nor for any other reason, unless such damages result solely from the gross negligence, willful misconduct, fraud or intentional misrepresentation of the Governmental Lender. Although this Borrower Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Borrower Loan Agreement shall be construed to preclude in any way any

action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and which the Governmental Lender has not assigned to the Funding Lender or any other person.

The Governmental Lender shall be entitled to the advice of counsel, and the Governmental Lender shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. The Governmental Lender shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within its discretion or powers hereunder, or (b) in good faith omitted to be taken by it because such action was reasonably believed to be beyond its discretion or powers hereunder, or (c) taken by it pursuant to any direction or instruction by which it is governed hereunder, or (d) omitted to be taken by it by reason of the lack of any direction or instruction required hereby for such action; nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The Governmental Lender shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person or entity, except for the gross negligence or willful misconduct of its own agents, officers and employees. When any payment or consent or other action by it is called for hereby, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. The Governmental Lender shall not be required to take any remedial action (other than the giving of notice) unless indemnity in a form acceptable to the Governmental Lender is furnished for any cost or liability to be incurred in connection with such remedial action, other than liability for failure to meet the standards set forth in this Section. The Governmental Lender shall be entitled to reimbursement for its costs reasonably incurred or advances reasonably made, with interest at the rate of 10% per annum, in the exercise of its rights or the performance of its obligations hereunder, to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which it may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect its subsequent exercise of the right or power.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Funding Lender under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) of and interest on the Funding Loan as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Funding Lender, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment price) of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Funding Lender, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Funding Lender, the Governmental Lender or any such third party, as the case may be, therefor.

Section 17.3 Waiver of Personal Liability. No member of the Board of Supervisors, officer, agent or employee of the Governmental Lender shall be individually or personally liable

for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member of the Board of Supervisors, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

Section 17.4 Limitation on Liability of Governmental Lender's and Funding Lender's Officers, Employees, Etc.

(a) Borrower assumes all risks of the acts or omissions of the Governmental Lender and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the Funding Lender at law or under any other agreement. None of Governmental Lender and the Funding Lender, nor the other Beneficiary Parties or their respective members of the Board of Supervisors, officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Funding Lender, or gross negligence of the Governmental Lender.

(b) None of the Governmental Lender, the Funding Lender, the other Beneficiary Parties or any of their respective members of the Board of Supervisors, officers, directors, employees and agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender and the Funding Lender for any purpose. Neither the Governmental Lender nor the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender and the Funding Lender. Approvals granted by the Governmental Lender and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower

Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), members of the Board of Supervisors, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 17.5 Delivery of Reports, Etc. The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

Section 17.6 No Limitations on Actions of Governmental Lender in Exercise of its Governmental Powers. Nothing in this Borrower Loan Agreement or the Funding Loan Agreement is intended, nor shall it be construed, to in any way limit the actions of the Governmental Lender in the exercise of its governmental powers, as contrasted with any contractual rights or powers. It is the express intention of the parties hereto that the Governmental Lender shall retain the full right and ability to exercise its governmental powers with respect to the Borrower, the Project and the transactions contemplated by this Borrower Loan Agreement and the other Borrower Loan Documents to the same extent as if it were not a party to this Borrower Loan Agreement, and in no event shall the Governmental Lender have any liability in contract arising under this Borrower Loan Agreement, the other Borrower Loan Documents or the Funding Loan Documents by virtue of any exercise of its governmental powers.

[Remainder of Page Intentionally Left Blank]

□IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

BERRELLESA PALMS, L.P.,  
a California limited partnership

By: 112 Alves Lane, Inc.  
a California nonprofit public benefit  
corporation, its general partner

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

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

Address:

Berrellesa Palms, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, CA 94704  
Attention: Executive Director  
Fax No. (510) 548-3502

With a copy to:

Gubb & Barshay LLP  
50 California Street, Suite 3155  
San Francisco, CA 94111  
Attention: Scott Barshay, Esq.  
Fax No. (415) 781-6967

And a copy to:

Union Bank, N.A.  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Attention: CFD Division Head  
Fax No. (925) 947-2455

And a copy to:

Paul Hastings LLP

[signature page to Borrower Loan Agreement – Berrellesa Palms]

515 South Flower Street,  
Twenty-Fifth Floor  
Los Angeles, CA 90071  
Attention: Kenneth Krug, Esq.  
Fax No. (213) 996-3230

GOVERNMENTAL LENDER:

COUNTY OF CONTRA COSTA, CALIFORNIA

By: \_\_\_\_\_  
Catherine Kutsuris,  
Director, Department of  
Conservation & Development

Address:  
County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Community Development Bond  
Program Manager  
Fax: (925) 674-7258

[signature page to Borrower Loan Agreement - Berrellesa Palms]



Agreed to and Acknowledged by:

FUNDING LENDER:

BANK OF THE WEST, a California banking  
Corporation

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

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

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

Address:

Real Estate Industries Division

NC-B07-3E-I

2527 Camino Ramon

San Ramon, California 94583

Fax No. (323) 837-3866

With a copy to:

Tomasi Salyer Baroway

121 SW Morrison Street, Suite 450

Portland, Oregon 97204

Attention: Valerie Athena Tomasi, Esq.

Facsimile: (971) 544-7236

[signature page to Borrower Loan Agreement – Berrellesa Palms]

☐ GENERAL CONTRACTOR

The undersigned General Contractor hereby represents and warrants it has approved the Plans and Specifications referenced in EXHIBIT C, makes the covenants set forth in Sections 8.5, 8.6 and 8.7 hereof and agrees that the Disbursement Schedule shall control notwithstanding the provisions of the General Contract.

GENERAL CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_

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

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

[signature page to Borrower Loan Agreement – Berrellesa Palms]

**EXHIBIT A**

**DISBURSEMENT SCHEDULE**

THIS EXHIBIT A IS ATTACHED TO AND A PART OF THAT CERTAIN BORROWER LOAN AGREEMENT DATED AS OF December 1, 2012, BY AND BETWEEN THE UNDERSIGNED.

BORROWER LOAN PROCEEDS IN THE AMOUNT OF \$\_\_\_\_\_ PLUS BORROWER'S EQUITY IN THE AMOUNT OF \$\_\_\_\_\_ (INCLUSIVE OF BORROWER'S FUNDS IN THE AMOUNT OF \$\_\_\_\_\_) AGGREGATING \$\_\_\_\_\_ SHALL BE DISBURSED AS FOLLOWS:

I. INITIAL DISBURSEMENT: Funding Lender is hereby authorized and directed to make Initial Disbursements for the purposes, in the amounts, and to the persons indicated:

1. To Funding Lender for Borrower Loan expenses, costs and fees the sum of \$\_\_\_\_\_.
2. To \_\_\_\_\_ for payment of Title Policy Premiums and recording fees, the approximate sum of \$\_\_\_\_\_.
3. For payment of taxes, the sum of \$\_\_\_\_\_.
4. Upon demand of \_\_\_\_\_, pay the principal sum of \$\_\_\_\_\_ plus interest thereon, if any, to \_\_\_\_\_ for the credit of Borrower for use in their escrow number \_\_\_\_\_.
5. To Funding Lender, the sum of \$\_\_\_\_\_ to pay the outstanding principal balance [and all accrued interest, charges and fees] of the Borrower Loan.
6. Other: \_\_\_\_\_.

If the Funding Lender so requests, any portion of Borrower's Equity which has not been expended and verified to the Funding Lender's satisfaction prior to the Initial Closing shall be deposited as Borrower's Funds in a Borrower's Funds Account prior to Recordation of the Trust Deed.

[It is a requirement of the Borrower Loan that any unexpended Borrower Funds or other Borrower Equity allocated to a line item in the Cost Breakdown be expended (and if in a Borrower's Funds Account, disbursed) prior to any disbursement of Borrower Loan proceeds for such line item.]

II. SUBSEQUENT DISBURSEMENTS: The remainder of the Borrower Loan proceeds and Borrower's Funds in the sum aggregate of \$\_\_\_\_\_ plus funds not disbursed as

provided for in Section I hereof or less any additional funds disbursed as provided for in Section I hereof, shall be disbursed in conformity with the following Sections:

A. On or about the first day of each calendar month following commencement of construction of the Improvements, Contractor shall submit to Borrower or Borrower's Architect, a Certified Invoice showing the estimated cost of labor performed on and materials incorporated into the Improvements. The original of such Certified Invoice, certified true and correct by the General Contractor and approved by Borrower or Borrower's Architect, shall be submitted to Funding Lender for payment. Upon verification of the accuracy of the Certified Invoice by the Funding Lender's inspection agent's review of the status of the Improvements, Funding Lender shall disburse to Borrower 100% of the amount of the respective Approved Certified Invoice but in no event shall the aggregate of such payments exceed the sum of \$\_\_\_\_\_ except as provided for by Borrower and accompanied by funds for the payment thereof. The Final Disbursement in the sum of \$\_\_\_\_\_ shall be made upon compliance with the provisions of Section 6.3 of the Borrower Loan Agreement.

B. The sum of \$\_\_\_\_\_ shall be paid to Borrower in progress payments. Each progress payment shall be paid upon the occurrence of the conditions and in amounts equal to the percentage of such sum set forth on the Funding Lender's approved Progress Payment Schedule attached as Schedule 1 attached hereto and made a part hereof.

C. The sum of \$\_\_\_\_\_ shall be disbursed for the Site Improvements, to the extent constructed directly by Borrower as owner-builder or by General Contractor, based upon the percentage of completion of the Site Improvements as verified by Funding Lender.

[ATTACH SCHEDULE 1]

[PROGRESS PAYMENT SCHEDULE]

D. The sum of \$\_\_\_\_\_ is an interest reserve which shall be disbursed from time to time on the interest payment date specified in the Borrower Notes by the withdrawing by Funding Lender of sufficient amounts to pay interest due on the Borrower Notes. Each such interest payment shall then be deemed paid in full. When said sum has been completely disbursed, Borrower shall make interest payments directly to Funding Lender in accordance with the terms of the Borrower Notes.

E. The sum of \$\_\_\_\_\_ shall be disbursed for soft costs in amounts and for the purposes specified below:

- (i) Permits & Fees \$\_\_\_\_\_
- (ii) Architectural & Engineering \$\_\_\_\_\_
- (iii) Taxes & Insurance \$\_\_\_\_\_

(iv) The sum of \$\_\_\_\_\_ shall be disbursed from time to time for inspection fees incurred by Funding Lender, or Funding Lender's agent, by the withdrawing by Funding Lender of sufficient amounts to pay the inspection fees incurred for the inspection of the Project. When said sum has been completely disbursed, Borrower shall make inspection fee payments directly to Funding Lender upon Funding Lender's request.

F. Any contingency line items in the Cost Breakdown shall be available for disbursement or reallocation to other line items upon Funding Lender's written approval (not unreasonably to be withheld provided all other requisite approvals have been obtained) to pay cost increases due to Change Orders and other changes of specific line items if and to the extent approved by Funding Lender; provided, however, that no contingency line item may be reduced by disbursement or reallocation to other line items if the amount remaining in the contingency line item would thereby be reduced (as a percentage of the original amount of such line item) below the percentage remaining undisbursed of line items for hard costs to complete the Improvements.

G. The following items shall be disbursed [on each disbursement date under Section [A] [B], above], in amounts determined as follows:

(i) General Contractor Profit, in the maximum sum of \$\_\_\_\_\_, shall be disbursed [EITHER] pro rata in the same proportion that each disbursement under Section II.[A][B] bears to the line item for hard costs of the Improvements provided in the Cost Breakdown [OR] monthly in the amount of \_\_\_\_\_% of the above-stated maximum sum per month.

(ii) General Contractor Overhead, in the maximum sum of \$\_\_\_\_\_, shall be disbursed [EITHER] pro rata in the same proportion that each disbursement under Section II.[A][B] bears to the line item hard costs of the Improvements provided in the Cost Breakdown [OR] monthly in the amount of \_\_\_\_\_% of the above-stated maximum sum per month.

(iii) Developer Overhead and Administration, in the maximum sum of \$\_\_\_\_\_, shall be disbursed [EITHER] pro rata in the same proportion that each disbursement under Section II.[A][B] bears to the line item hard costs of the Improvements provided in the Cost Breakdown [OR] monthly in the amount of \_\_\_\_\_% of the above-stated maximum sum per month.

(iv) Developer Fee, in the maximum sum of \$\_\_\_\_\_, shall be disbursed [EITHER] pro rata in the same proportion that each disbursement under Section II.[A][B] bears to the line item hard costs of the Improvements provided in the Cost Breakdown [OR] monthly in the amount of \_\_\_\_\_% of the above-stated maximum sum per month.

It is a requirement of the Loan that any unexpended Borrower Funds or other Borrower Equity allocated in a line item in the Cost Breakdown be expended (and if in a Borrower Funds Account, disbursed) prior to any disbursement of Loan proceeds for such line item.

[Identify Subordinate Loans/Subordinate Lenders, if any]

*[DELETE NEXT TWO PARAGRAPHS IF NOT APPLICABLE:]*

BORROWER ACKNOWLEDGES THAT STATE LAW REQUIRES ANY ESCROW AGENT HANDLING FUNDS IN AN ESCROW CAPACITY (INCLUDING ANY TITLE INSURANCE COMPANY) TO HAVE DEPOSITED INTO ITS ESCROW DEPOSITORY ACCOUNT, PRIOR TO RECORDING A TRANSACTION, IMMEDIATELY AVAILABLE FUNDS REPRESENTING ALL DISBURSEMENTS TO BE MADE BY THE ESCROW AGENT.

ACCORDINGLY, WITH RESPECT TO ALL FUNDS TO BE DISBURSED PURSUANT TO THE ABOVE, BORROWER AUTHORIZES FUNDING LENDER TO MAKE SUCH DISBURSEMENT TO THE TITLE INSURER ON THE DATE SPECIFIED BY SAID TITLE INSURER, WHICH DATE MAY BE PRIOR TO THE RECORDING OF THE TRUST DEED. INTEREST ON AMOUNTS OUTSTANDING UNDER THE NOTE SHALL ACCRUE FROM THE DATE OF DISBURSEMENT, WHICH MAY NOT BE THE DATE OF RECORDING OF THE TRUST DEED. TITLE INSURER SHALL SPECIFY THE DATE IT REQUIRES SUCH PROCEEDS (INCLUDING LOAN PROCEEDS) FOR USE IN SAID ESCROW.

[ ] CREDITING COMMERCIAL ACCOUNT # \_\_\_\_\_  
AT OFFICE NO. \_\_\_\_\_

[ ] CASHIER'S CHECK

[ ] WIRE TRANSFER:

ACCOUNT NO.: \_\_\_\_\_  
FUNDING LENDER OFFICE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CONTACT: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_  
ABA ROUTING NO.: \_\_\_\_\_

☐ SCHEDULE 1

PROGRESS PAYMENT SCHEDULE

[Commercial/Multi-Family Building

Each Disbursement for the Building(s) shall be in the amount of 100% of the amount requested.]

**□ EXHIBIT B**

**COST BREAKDOWN**

Attached hereto, consisting of \_\_\_\_\_ pages signed by Borrower.

□



## **EXHIBIT C**

### **SCHEDULE OF PLANS AND SPECIFICATIONS**

Consisting of \_\_\_\_\_ pages attached hereto.

□

## EXHIBIT D

[intentionally omitted]

□

**EXHIBIT E**  
**SUBORDINATE DEBT**

□

## EXHIBIT F

### SPECIAL CONDITIONS

**SPECIAL CONDITIONS:** The following provisions are incorporated into the Borrower Loan Agreement dated as of December 1, 2012, and supersede any provision of the Borrower Loan Agreement to the extent inconsistent therewith.

A. Final Map: Prior to Funding Lender's approval (and the approval by all applicable Governmental Authorities), and the due recordation by the Local Authority of a final [subdivision] [tract] map [or plat] creating the lots and containing offers of dedication and easements as may be required by the Local Authority and be acceptable to Funding Lender (the "Final Map") [and the issuance to Funding Lender of CLTA Endorsement \_\_\_\_ to its Title Policy] only the following items in the Disbursement Schedule (EXHIBIT C) shall be disbursable or available for disbursement: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

B. Plans and Specifications: Prior to Funding Lender's approval of Plans and Specifications for the Units and the execution by Borrower and Funding Lender of as amended EXHIBIT C specifying the same only the following items in the Disbursement Schedule (EXHIBIT A) shall be available for disbursement: \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

C. Cost Breakdown: Prior to completion of a final cost review by Funding Lender, Funding Lender's approval of a final Cost Breakdown and the execution by Funding Lender and Borrower of an amended EXHIBIT B specifying the same, only the following items in the Disbursement Schedule shall be available for disbursement: \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

D. [intentionally omitted]

E. Extension: Provided there is no Event of Default (as defined in the Borrower Loan Documents), Borrower will be permitted to extend the Outside Conversion Date (the "Extension") for up to three (3) months ("Extension Period") provided that all of the following conditions are satisfied:

1. Borrower by written notice to the Funding Lender requests the Extension and concurrently pays the applicable Extension Fee on or before (60) days prior to the Completion Date.

2. Borrower executes any documentation required by the Funding Lender in connection with such Extension.

3. Borrower causes the Title Insurer to issue an endorsement to the Title Policy assuring the Funding Lender for the benefit of the Funding Lender that the priority of the Trust Deed is unaffected by the Extension and that there are no additional exceptions to title, except those approved by the Funding Lender.

4. Funding Lender will have received Borrower's and Guarantors' most current Financial Statements, certified as correct by Borrower and Guarantors, as applicable and there will have been no material adverse change in Borrower's or Guarantors' financial condition that will, in the Funding Lender's sole determination, adversely affect their respective abilities to perform their obligations to the Governmental Lender.

5. [Borrower will have satisfied all financial covenants set forth in the Borrower Loan Documents.]

6. [Borrower will have maintained a debt service coverage ratio of not less than [ ] to 1.00 ("Extension Performance Covenant") for the trailing three (3) month period ending on the 17th full calendar month following the Initial Closing Date. The denominator of the Extension Performance Covenant shall be the greater of (i) the 10-year Treasury Bill Note Rate plus [ ]%, or (ii) [ ]%, with both calculations using a 30-year amortization schedule for the Payment Obligations under Borrower Construction Note and the Borrower Construction/Permanent Note - Tranche A and an 11-year amortization schedule for the Payment Obligations under the Borrower Construction/Permanent Note - Tranche B. The numerator of the Extension Performance Covenant shall be the actual three (3) months trailing net operating income of which expenses shall be the greater of (i) the operating expense amount set forth in the most recent Funding Lender ordered appraisal or (ii) actual expenses.]

7. Borrower shall have paid to the Funding Lender the Extension Fee.

F. Conversion: Provided that no uncured Event of Default has occurred as provided in Article IX of the Borrower Loan Agreement, and upon Borrower's satisfaction of the Conditions to Conversion (defined below), pursuant to Article III the Borrower Loan shall convert (the "Conversion") from a construction loan into a permanent loan (the "Permanent Loan"). The term "Conditions to Conversion" shall mean all the following:

1. A certificate of occupancy or its equivalent has been issued by the Local Authority covering the entire Project;

2. By written notice delivered to Funding Lender, Borrower requests the Conversion and concurrently pays the Conversion Fee as set forth in a separate fee letter on or before the Conversion;

3. Borrower and Guarantor each execute any documentation required by Funding Lender in connection with such Conversion;

4. Borrower causes the Title Company to issue an endorsement to the Title Policy assuring Funding Lender that the priority of the Trust Deed is unaffected by the Conversion and there are no additional exceptions to title, except those approved by Funding Lender;

5. Funding Lender shall have received and approved Borrower's and Guarantor's current Financial Statements, certified as true and correct by Borrower and Guarantor, and there shall have been no material adverse change in Borrower's and Guarantor's financial condition;

6. Borrower, Guarantor, and Completion Guarantor shall be in compliance with all financial covenants set forth in this Agreement, as the case may be, and the Guaranty and the Completion Guaranty;

7. Construction of the Improvements shall have been completed in accordance with all requirements of this Borrower Loan Agreement, as determined by Funding Lender;

8. The stabilized fee simple value of the Property shall not exceed \_\_\_\_\_ percent (\_\_\_%), based upon an updated appraisal acceptable to Funding Lender;

9. The Borrower shall prepay the Borrower Loan in an amount equal to the difference between the outstanding amount of the Funding Loan and the Permanent Period Amount. The "Permanent Period Amount" shall equal that amount of principal (the "Maximum DSC Amount") which will, based on the amortization schedule and interest rates established under the Borrower Notes, provide for a minimum 1.20 to 1.00 Debt Service Coverage Ratio. The Debt Service Coverage Ratio is a fraction with the numerator constituting the net operating income of the Project determined as of the DSC Calculation Date (based on actual rents and annual pro forma expenses of [\$\_\_\_\_\_]) and annual replacement reserves of [\$\_\_\_\_\_]) and the denominator constituting annualized debt service on the Borrower Notes based on the applicable interest rates and the funded principal amount of the Borrower Notes, as of the DSC Calculation Date. [For purposes of determining the Maximum DSC Amount under this clause (9), the DSC Calculation Date is the Conversion Date.]

10. The Property shall achieve a Debt Service Coverage Ratio (calculated pursuant to paragraph 9 above) of 1.20 to 1.00;

11. During the term of the Permanent Loan, commencing on the first (1st) Business Day of each month, Borrower shall pay monthly installments of principal and interest as required under the Borrower Notes; and

12. The Property shall have achieved 90% occupancy for the trailing three (3) month period ending on the Conversion Date.

13. Conversion must be attained no later than the Outside Conversion Date, or upon payment of any fee for extension of Conversion set forth in a separate fee letter on or before the Outside Conversion Date, no later than the Extended Outside Conversion Date.