

HOME, CDBG, AND HOPWA LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

BERRELLESA PALMS, L.P.

Berrellesa Palms

dated December 1, 2012

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HOME, CDBG, AND HOPWA LOAN AGREEMENT
(Berrellesa Palms)

This HOME, CDBG, and HOPWA Loan Agreement (the "Agreement") is dated December 1, 2012, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Berrellesa Palms, L.P., a California limited partnership ("Borrower").

RECITALS

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

B. The County has received HOME Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92. The HOME Funds are funds which are set aside for entities that are designated as a Community Housing Development Organization ("CHDO") as defined in 24 C.F.R. 92.2.

C. The County has received Community Development Block Grant funds from HUD under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG Funds"). The CDBG Funds must be used by the County in accordance with 24 C.F.R. Part 570.

D. The County has received Housing Opportunities for Persons with AIDS Program funds from HUD pursuant to the HOPWA program ("HOPWA Funds"). The HOPWA Funds are available to and administered by the County, as the subrecipient of the City of Oakland, which is the representative for the Alameda-Contra Costa County Eligible Metropolitan Area. The HOPWA Funds must be used by the County in accordance with 24 C.F.R. Part 574.

E. Borrower is the owner of that certain real property located at 301 Buckley Street in the City of Martinez, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct forty-nine (49) multifamily housing units on the Property, forty-eight (48) of which will be for rental to very low income seniors and one manager's unit (the "Development"). The Development as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

F. On March 24, 2010 the County loaned Resources for Community Development, a California nonprofit public benefit corporation ("RCD"), Six Hundred Fifty Thousand Dollars (\$650,000) in HOME Funds to assist in funding predevelopment expenses of the Development (the "Predevelopment Loan"). The Predevelopment Loan is evidenced by the following documents: (i) Predevelopment Loan Agreement by and between the County and RCD, dated March 24, 2010, which was assigned to the Borrower pursuant to an assignment agreement dated October 1, 2010 (the "Predevelopment Loan Agreement"); (ii) First Amended and Restated Promissory Note dated October 1, 2010 and executed by Borrower for the benefit of the County

(the "HOME Note"); (iii) Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of the County, dated October 1, 2010, which was recorded against the Property as instrument number 2010-0234094-00 (the "HOME Deed of Trust"); and (iv) Regulatory Agreement and Declaration of Restrictive Covenants by and between Borrower and the County, dated October 1, 2010, which was recorded against the Property as instrument number 2010-0234092-00 (the "HOME and CDBG Regulatory Agreement").

G. On October 1, 2010, the County loaned One Million Five Hundred Twenty-Five Thousand Dollars (\$1,525,000) of CDBG Funds to Borrower to assist in the acquisition of the Property (the "Acquisition Loan"). The Acquisition Loan is evidenced by the following documents all dated as of October 1, 2010: (i) CDBG Loan Agreement by and between Borrower and the County (the "CDBG Loan Agreement"); (ii) Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of the County which was recorded against the Property as instrument number 2010-0234093 (the "CDBG Deed of Trust"); (iii) a promissory note executed by Borrower for the benefit of the County in the amount of the CDBG Loan (the "CDBG Note"); and (iv) the HOME and CDBG Regulatory Agreement. The Acquisition Loan is also evidenced by a CDBG Project Agreement dated October 1, 2010 (the "CDBG Project Agreement").

H. To assist in the construction of the Development Borrower desires to borrow from the County (i) Two Million Three Hundred Thousand Dollars (\$2,300,000) of additional HOME Funds (the "Additional HOME Loan"), which, when combined with the Predevelopment Loan, results in a total commitment of HOME Funds of Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000), and (ii) Three Hundred Thousand Dollars (\$300,000) in HOPWA Funds (the "HOPWA Loan"). Construction of the Development is intended to maintain the supply of affordable rental housing Contra Costa County.

I. This Agreement supersedes the Predevelopment Loan Agreement and CDBG Loan Agreement and sets forth the terms and conditions agreed to by the parties with respect to the Predevelopment Loan, Acquisition Loan, the Additional HOME Loan, and the HOPWA Loan. Together, such loans total Four Million Seven Hundred Seventy-Five Thousand Dollars (\$4,775,000) and are the "Loan".

J. Concurrently with the execution of this Agreement: (i) Borrower is executing the Deed of Trust which secures Borrower's obligation to repay the Loan, and the County is reconveying the HOME Deed of Trust and CDBG Deed of Trust, (ii) Borrower is executing the Regulatory Agreement, which governs the use of the CDBG Funds, HOME Funds, and HOPWA Funds, and the County is terminating the HOME and CDBG Regulatory Agreement, and (iii) Borrower is executing the Note which evidences Borrower's obligation to repay the Loan, and the County is cancelling the CDBG Note and HOME Note.

K. Due to the assistance provided Borrower through the Loan the County has classified twenty-four (24) units as CDBG-assisted and HOME-assisted units, three (3) of which are also HOPWA-assisted (each such unit, a "County-Assisted Unit").

L. The City of Martinez, California has concluded that the Development is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") under California Public Resources Code Sections 21159.21, 21159.23, 21159.24 and CEQA Guidelines Sections 15192, 15194, 15195, 15182, and 15332).

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

The parties therefore agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Acquisition Loan" has the meaning set forth in Paragraph G of the Recitals.

(b) "Additional HOME Loan" has the meaning set forth in Paragraph H of the Recitals.

(c) "Adjusted Loan" means, to the extent less than the full amount of the Loan is funded, an amount equal the actual principal amount loaned to Borrower by the County pursuant to this Agreement. If the full amount of the Loan is funded, the Adjusted Loan is equal to the Loan.

(d) "Adjusted MHP Loan" means, to the extent less than the full amount of the MHP Loan is funded, an amount equal to the actual principal amount loaned to Borrower by HCD pursuant to the documents between Borrower and HCD evidencing the MHP Loan. If the full amount of the MHP Loan is funded, the Adjusted MHP Loan is equal to the MHP Loan.

(e) "Agreement" means this Loan Agreement.

(f) "AHAP" means the Agreement to Enter Housing Assistance Payment Contract between Borrower and the Housing Authority governing the commitment of project-based section 8 rental assistance to the Development by the Housing Authority, as approved by HUD.

(g) "AHP Loan" has the meaning set forth in Section 1.1(k)(ii).

(h) "Annual Operating Expenses" means for each calendar year, "Operating Expenses" as defined in 25 California Code of Regulations Section 8301(j), subject

to the following limitations:

(i) on-site service provider fees for tenant social services, may not exceed the levels set forth in a services plan and budget approved in writing by the County;

(ii) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, may not exceed amounts that are standard in the industry or amounts that are established in a management contract approved by the County; and

(iii) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development may not exceed amounts that are standard in the industry and may only be included in Annual Operating Expenses to the extent such fees are not included in the Partnership/Asset Fee.

(i) "Annual Payment" has the meaning set forth in Section 2.8(a).

(j) "Approved Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, that is attached hereto and incorporated herein as Exhibit B.

(k) "Approved Financing" means all of the following loans, grants and equity obtained by Borrower and approved by the County for the purpose of financing the acquisition of the Property and construction of the Development:

(i) County multi-family housing revenue tax exempt bonds in the approximate amount of Fourteen Million Three Hundred Thousand Dollars (\$14,300,000) (the "Bonds") that are purchased by Bank of the West (the "Bank"), the proceeds of which are loaned to the Borrower (the "Bond Loan");

(ii) Affordable Housing Program Loan from the Bank in the approximate amount of Four Hundred Ninety Thousand Dollars (\$490,000); (the "AHP Loan")

(iii) Low Income Housing Tax Credit investor equity funds in the approximate amount of Eight Million Six Hundred Forty-Four Thousand Six Hundred Seventy-Nine Dollars (\$8,644,679) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(iv) Capital contribution from the Borrower's general partner in the approximate amount of One Million One Hundred Twenty-Nine Thousand Five Hundred Dollars (\$1,129,500) (the "General Partner Contribution"); and

(v) Multifamily Housing Program ("MHP") loan from the California Department of Housing and Community Development ("HCD") in the approximate amount of Six Million Dollars (\$6,000,000) (the "MHP Loan").

- (l) "Available Balance" has the meaning set forth in Section 2.1(c).
- (m) "Bank" has the meaning set forth in Section 1.1(k)(i).
- (n) "Bid Package" means the package of documents Borrower's general contractor is required to distribute to potential bidders as part of the process of selecting subcontractors for the Development. The Bid Package is to include the following: (i) an invitation to bid, (ii) copy of the proposed construction contract; (iii) a form of bid guarantee that is reasonably acceptable to the County that guarantees, at a minimum, an amount equal to five percent (5%) of the bid price, and (iv) all Construction Plans.
- (o) "Bonds" has the meaning set forth in Section 1.1(k)(i).
- (p) "Bond Loan" has the meaning set forth in Section 1.1(k)(i).
- (q) "Borrower" has the meaning set forth in the first paragraph of this Agreement.
- (r) "Borrower's Shared Portion of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.
- (s) "CDBG" means the Community Development Block Grant program pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended.
- (t) "CDBG Deed of Trust" has the meaning set forth in Paragraph G of the Recitals.
- (u) "CDBG Funds" has the meaning set forth in Paragraph C of the Recitals.
- (v) "CDBG Loan Agreement" has the meaning set forth in Paragraph G of the Recitals.
- (w) "CDBG Note" has the meaning set forth in Paragraph G of the Recitals.
- (x) "CDBG Project Agreement" has the meaning set forth in Paragraph G of the Recitals.
- (y) "CEQA" has the meaning set forth in Paragraph L of the Recitals.
- (z) "CHDO" has the meaning set forth in Paragraph B of the Recitals.
- (aa) "City" means the City of Martinez, California, a municipal corporation.

- (bb) "Commencement of Construction" has the meaning set forth in Section 3.5.
- (cc) "Completion Date" means the date a final certificate of occupancy, or equivalent document, is issued by the City to certify that the Development may be legally occupied.
- (dd) "Construction Plans" means all construction documentation upon which Borrower and Borrower's general contractor rely in constructing all the Improvements on the Property (including the units in the Development, landscaping, parking, and common areas) and includes, but is not limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").
- (ee) "County" has the meaning set forth in the first paragraph of this Agreement.
- (ff) "County-Assisted Units" has the meaning set forth in Paragraph K of the Recitals.
- (gg) "County Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Adjusted Loan, by the sum of the Adjusted Loan and Adjusted MHP Loan.
- (hh) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as Trustor, Chicago Title Company, as trustee, and the County, as beneficiary, that encumbers the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.
- (ii) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (jj) "Developer Fee" has the meaning set forth in Section 3.18.
- (kk) "Development" has the meaning set forth in Paragraph E of the Recitals.
- (ll) "Event of Default" has the meaning set forth in Section 6.1.
- (mm) "Fifteen Year Compliance Period" means the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (nn) "Final Cost Certification" has the meaning set forth in Section 4.2.
- (oo) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the Final Cost Certification.

(pp) "General Partner Contribution" has the meaning set forth in Section 1.1(k)(iv).

(qq) "Hazardous Materials" means: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(rr) "Hazardous Materials Claims" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(ss) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(tt) "HCD" has the meaning set forth in Section 1.1(k)(v).

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

(vv) "HOME and CDBG Regulatory Agreement" has the meaning set forth in Paragraph F of the Recitals.

(ww) "HOME Deed of Trust" has the meaning set forth in Paragraph F of the Recitals.

(xx) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.

(yy) "HOME Note" has the meaning set forth in Paragraph F of the Recitals

(zz) "HOME Reporting Term" means the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the date of this Agreement.

(aaa) "HOPWA" means the Housing Opportunities for Persons with AIDS Program pursuant to the AIDS Housing Opportunity Act (42 USC 12901 et. seq.), as amended by the Housing and Community Development Act of 1992 (42 USC 5301 et. seq.).

(bbb) "HOPWA Eligible Household" means a household that includes at least one Person with HIV/AIDS.

(ccc) "HOPWA Funds" has the meaning set forth in Paragraph D of the Recitals

(ddd) "HOPWA Loan" has the meaning set forth in Paragraph H of the Recitals.

(eee) "HOPWA Term" means the period beginning on the date of this Agreement and ending on the tenth (10th) anniversary of the date of this Agreement.

(fff) "HOPWA Unit" means a unit in the Development restricted to occupancy by a HOPWA-Eligible Household, as further set forth in in the Regulatory Agreement.

(ggg) "Housing Authority" means the Housing Authority of Contra Costa County.

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

(iii) "Improvements" has the meaning set forth in Paragraph E of the Recitals.

(jjj) "Investor Limited Partner" means Union Bank, N.A., its successors and assigns.

(kkk) "Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.

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

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

(nnn) "Marketing Plan" has the meaning set forth in Section 3.10.

(ooo) "MHP Loan" has the meaning set forth in Section 1.1(k)(v).

(ppp) "NEPA" has the meaning set forth in Paragraph M of the Recitals.

(qqq) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds Final Development Costs.

(rrr) "Note" means the First Amended and Restated Promissory Note of even date herewith that evidences Borrower's obligation to repay the Loan.

(sss) "Operating Income" for each calendar year has the meaning set forth in 25 California Code of Regulations Section 8301(k).

(ttt) "Other Regulatory Agreements" means the regulatory agreement and declaration of restrictive covenants associated with the Bond Loan, the regulatory agreement associated with the Low Income Housing Tax Credits, and the regulatory agreement associated with the MHP Loan, all of which will be recorded against the Property.

(uuu) "Partnership Agreement" means the agreement between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.

(vvv) "Partnership/Asset Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period, and (ii) after expiration of the Fifteen Year Compliance Period, asset management fees payable to Borrower, in the amounts approved by the County as set forth in Section 3.19.

(www) "Permanent Closing" means the date the deed of trust that secured repayment of the MHP Loan is recorded against the Property.

(xxx) "Permanent Financing" means the sum of the following amounts: (i) the portion of the Bond Loan that has a term greater than twenty-four (24) months; (ii) the AHP Loan; (iii) the Loan; (iv) the Tax Credit Investor Equity; (v) the General Partner Contribution; and (vi) the MHP Loan.

(yyy) "Persons with HIV/AIDS" has the meaning set forth in the Regulatory Agreement.

(zzz) "Predevelopment Loan" has the meaning set forth in Paragraph F of the Recitals.

(aaaa) "Predevelopment Loan Agreement" has the meaning set forth in Paragraph F of the Recitals.

(bbbb) "Property" has the meaning set forth in Paragraph E of the Recitals.

(cccc) "RCD" has the meaning set forth in Paragraph F of the Recitals.

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

(eeee) "Residual Receipts" means for each calendar year, the amount by which Operating Income exceeds Annual Operating Expenses after payment of:

(i) mandatory debt service payments on loans associated with Approved Financing;

(ii) replacement and operating reserve deposits in amounts required by HCD in connection with the MHP Loan;

(iii) fees paid to the County as issuer of the Bonds, associated with the Bond Loan;

(iv) fees paid to the Housing Authority for administration of the Housing Assistance Payment Contract governing the provision of project-based section 8 rental assistance to the Development;

(v) any previously unpaid portion of the Developer Fee (without interest) as limited by Section 3.18;

(vi) the Partnership/Asset Fee in the amount set forth in Section 3.19;
and

(vii) any extraordinary operating costs specifically approved in writing by the County.

(ffff) "Retention Amount" means Ten Thousand Dollars (\$10,000) of the Additional HOME Loan portion of the Loan, the disbursement of which is described in Section 2.7.

(gggg) "Senior Lender" has the meaning set forth in Section 2.5.

(hhhh) "Senior Loan" has the meaning set forth in Section 2.5.

(iiii) "Social Services Plan" has the meaning set forth in Section 3.10(b).

(jjjj) "Statement of Residual Receipts" has the meaning in Section 2.9.

(kkkk) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(k)(iii).

(llll) "TCAC" means the California Tax Credit Allocation Committee.

(mmmm) "Tenant" means the tenant household that occupies a unit in the Development.

(nnnn) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55th) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57th) anniversary of this Agreement.

(oooo) "Transfer" has the meaning set forth in Section 4.14 below.

Section 1.2 Exhibits

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

- Exhibit A: Legal Description of the Property
- Exhibit B: Approved Development Budget
- Exhibit C: NEPA Mitigation Requirements

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan.

(a) Subject to Section 2.6 and Section 2.7 of this Agreement, the County shall lend to Borrower the unfunded balance of the Loan. The Loan may only be used for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

(b) The funded and unfunded balances of the Predevelopment Loan and the Acquisition Loan are as follows:

(i) Predevelopment Loan. Six Hundred Forty-Eight Thousand Six Hundred Six and 65/100 Dollars (\$648,606.65) of the Predevelopment Loan has been funded, leaving One Thousand Three Hundred Ninety-Three and 35/100 Dollars (\$1,393.35) available of the purposes set forth in Section 2.3 below.

(ii) Acquisition Loan. One Million Four Hundred Forty-Eight Thousand Six Hundred Thirty-Nine 50/100 Dollars (\$1,448,639.50) of the Acquisition Loan has been funded, leaving Seventy-Six Thousand Three Hundred Sixty and 50/100 Dollars (\$76,360.50) available for the purposes set forth in Section 2.3 below.

(c) Available Balance. The unfunded balance of the Loan as of the date of this Agreement is Two Million Six Hundred Seventy-Seven Thousand Seven Hundred Fifty-Three 85/100 Dollars (\$2,677,753.85) (the "Available Balance"), which is the sum of the unfunded balance of the Predevelopment, the unfunded balance of the Acquisition Loan, the Additional HOME Loan, and the HOPWA Loan.

Section 2.2 Interest.

(a) Subject to the provisions of Subsection (b) below, simple interest will accrue on the outstanding principal balance of the Loan from the date of each disbursement at a per annum rate of interest equal to three percent (3%).

(b) Upon the occurrence of an Event of a Default, interest on the outstanding principal balance of the Loan will begin to accrue, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured, at the Default Rate.

Section 2.3 Use of Loan Funds.

(a) Borrower may only use the Loan to fund predevelopment costs of the Development, acquisition of the Property, and construction of the Development, consistent with the Approved Development Budget as follows:

(i) The Predevelopment Loan may only be used to fund predevelopment activities necessary for the construction of the Development including permits, fees, soft costs.

(ii) The Acquisition Loan may only be used to fund acquisition of the Property, relocation costs, and demolition of existing improvements.

(iii) The Additional HOME Loan may only be used to fund permits, fees, soft costs, and construction of the Development.

(iv) The HOPWA Loan may only be used to fund permits, fees, soft costs, Developer Fee, and construction of the Development.

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

(c) Borrower must comply with the CDBG Project Agreement in its use of the Acquisition Loan.

Section 2.4 Security.

Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and causing or permitting it to be recorded as a lien against the Property, senior to the deed of trust securing the AHP Loan. Borrower shall also cause or permit the Regulatory Agreement to be recorded against the Property.

Section 2.5 Subordination.

Any agreement by the County to subordinate the Deed of Trust and/or Regulatory Agreement to an encumbrance securing and/or evidencing the Bond Loan (each such, a "Senior Loan"), will be subject to the satisfaction of each of the following conditions:

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

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

(c) Borrower demonstrates to the County's satisfaction that subordination of the Deed of Trust and the Regulatory Agreement is necessary to secure adequate acquisition,

construction, and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

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

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

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

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

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The disbursements made pursuant to this Section 2.6 may not exceed Two Million Six Hundred Sixty-Seven Thousand Seven Hundred Fifty-Three 85/100 Dollars (\$2,667,753.85) of the Available Balance. The County is not obligated to disburse any portion of the Available Balance for the construction of the Development, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

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

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

(c) Borrower has delivered to the County a copy of a corporate resolution authorizing Borrower to obtain the Loan and all other Approved Financing, and execute the Loan Documents;

(d) There exists no material adverse change in the financial condition of

Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

(e) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.15 below;

(f) Borrower has executed and delivered to the County the Loan Documents and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the County;

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

(h) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of Contra Costa.

(i) All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of planned compliance with all NEPA and CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all NEPA and CEQA requirements and mitigation measures applicable to preconstruction;

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

(k) Borrower has obtained all permits and approvals necessary for the construction of the Development;

(l) The County has received and approved the Bid Package for the subcontractors for the construction of the Development pursuant to Section 3.2 below;

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

(n) The County has received and approved labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below;

(o) Borrower has closed all loans and equity that are part of the Approved Financing described in Section 1.1(k)(i)-(iv) and has already received or is eligible to receive the funds;

(p) The County has received a fully executed copy of the AHAP;

(q) The County has received a fully executed copy of an estoppel agreement among the Bank, HCD, and Borrower regarding the MHP Loan;

(r) The County has received a fully executed copy of the Partnership Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Investor Equity;

(s) The County has received reasonable evidence that the local match requirements set forth in 24 C.F.R. Section 92.218 et seq., have been satisfied pursuant to Section 4.1 of this Agreement; and

(t) The County has received a written draw request from Borrower, including (i) certification that the condition set forth in Section 2.6(a) continues to be satisfied, (ii) certification that the proposed uses of funds is consistent with the Approved Development Budget, (iii) the amount of funds needed, and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

Section 2.7 Conditions Precedent to Disbursement of Retention.

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

(a) The County has received a completion report from Borrower setting forth (i) the income, household size, race, and ethnicity of Tenants of the County-Assisted Units, (ii) and the unit size, rent amount and utility allowance for all County-Assisted Units.

(b) The County has received a Final Cost Certification for the Development from Borrower showing all uses and sources.

(c) The County has received from Borrower copies of the certificate of occupancy or equivalent final permit sign-offs for the Development.

(d) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.15 below.

(e) The County has received from Borrower a form of Tenant lease.

(f) The County has received from Borrower a Marketing Plan and Social Services Plan.

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

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

(i) If Borrower was required to comply with relocation requirements, the County has received from Borrower evidence of compliance with all applicable relocation requirements.

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

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

(l) The County has received from Borrower evidence of compliance with all NEPA mitigation requirements as set forth in Exhibit C.

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

Section 2.8 Repayment Schedule.

(a) Annual Payments. Commencing on May 15, 2015, and on May 15 of each year thereafter during the Term, Borrower shall make a loan payment in an amount equal to the County Prorata Percentage of the Lenders' Share of Residual Receipts plus Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments (1) first, to accrued interest, and (2) second, to principal.

(b) Special Repayments from Net Proceeds of Permanent Financing. No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County one hundred percent (100%) of the Net Proceeds of Permanent Financing, as a special repayment of the Loan. No later than one hundred eighty (180) days following completion of construction of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification as defined Section 4.2 below. The County shall approve or disapprove Borrower's determination of the amount of the Net

Proceeds of Permanent Financing in writing within thirty (30) days of receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained.

(c) Payment in Full. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of (i) any Transfer other than as permitted pursuant to Section 4.14, (ii) an Event of Default, and (iii) the expiration of the Term.

(d) Prepayment. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreement and the Deed of Trust will remain in effect for the entire Term, regardless of any prepayment or Transfer.

Section 2.9 Reports and Accounting of Residual Receipts.

In connection with the Annual Payment, Borrower shall furnish to the County:

(a) The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 201__ and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(b) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(c) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Lenders' Share of Residual Receipts.

The receipt by the County of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County of any Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.6 below.

Section 2.10 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under

Sections 3.8, 3.9, 4.7(b)(vi), 4.8, and 7.4 of this Agreement, or liability for (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the construction of the Development no later than December 31, 2012, or such later date that the County approves in writing.

Section 3.2 Bid Package.

Not later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package, Borrower shall submit to the County a copy of Borrower's general contractor's proposed Bid Package. The County's Deputy Director – Department of Conservation and Development, or his or her designee, shall approve or disapprove the Bid Package within fifteen (15) days after receipt of the Bid Package by the County. If the County rejects the proposed Bid Package the reasons therefore must be given to Borrower. The Borrower will then have fifteen (15) days to revise the proposed Bid Package and resubmit it to the County. The County will then have fifteen (15) days to review and approve Borrower's new or corrected Bid Package. The provisions of this Section will continue to apply until a proposed Bid Package has been approved by the County. Borrower may not publish a proposed Bid Package until it has been approved by the County.

Section 3.3 Construction Contract.

(a) Not later than fifteen (15) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Development. All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that Borrower enters for construction of the Development is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the construction, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract will include all applicable federal requirements set forth in Section 4.7 below. The County's approval of the construction contract may not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

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

Section 3.4 Construction Bonds.

Not later than thirty (30) days prior to the proposed Commencement of Construction Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Development. Such bonds must name the County as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development to occur no later than December 31, 2012, or such later date that the County approves in writing. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute construction of the Development to completion, and shall cause the construction of the Development to be completed no later than December 31, 2015, or such later date that the County approves in writing, but in no event later than June 30, 2016.

Section 3.7 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Development in conformance with (i) the plans and specifications approved by the City's Building Inspection Department, and (ii) the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the County. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (i) any change in the work the cost of which exceeds Twenty-Five Thousand Dollars (\$25,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Fifty Thousand Dollars (\$50,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or

release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with:

(i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter;

(ii) the property standards set out in 24 C.F.R. Section 5.701 et seq. and 24 C.F.R. 92.251; and

(iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the County for the procurement and maintenance thereof.

Section 3.8 Prevailing Wages.

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

(b) State Prevailing Wages. Borrower shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). Borrower shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. Borrower shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq. Copies of the currently applicable current per diem prevailing wages are available from DIR. During the construction of the Development, Borrower shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the

failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this Subsection survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.9 Accessibility.

Borrower shall construct the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). In compliance with Section 504, a minimum of three (3) Units of all Units must be constructed to be fully accessible to households with a mobility impaired member and an additional one (1) Unit of all Units must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with Section 504 Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Development in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.10 Marketing Plan and Social Services Plan.

(a) Marketing Plan.

(i) No later than six (6) months prior to the projected date of the completion of the construction of the Development, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households and HOPWA Eligible Households as required by the Regulatory Agreement (the "Marketing Plan"). The Marketing Plan must include information on affirmative marketing efforts and compliance with fair housing laws and 24 C.F.R. 92.351(a).

(ii) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan. Unless disapproved by the County in writing within fifteen (15) days after receipt, the Marketing Plan will be deemed approved. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within fifteen (15) days. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County. If the Borrower does not submit a revised Marketing Plan that is approved by the County by three (3) months prior to the projected date of the completion of the Development, Borrower will be in default of this Agreement.

(b) Social Service Plan.

(i) No later than six (6) months prior to the projected date of the completion of the construction of the Development, Borrower shall submit to the County for approval its plan for providing social services from qualified service providers to the HOPWA Eligible Households of the Development, as required by 24 C.F.R. Section 574.310(a)(1) (the "Social Services Plan").

(ii) Upon receipt of the Social Services Plan, the County will promptly review the Social Services Plan. Unless disapproved by the County in writing within fifteen (15) days after receipt, the Social Services Plan will be deemed approved. If the Social Services Plan is not approved, Borrower shall submit a revised Social Services Plan within fifteen (15) days. Borrower shall follow this procedure for resubmission of a revised Social Services Plan until the Social Services Plan is approved by the County. If the Borrower does not submit a revised Social Services Plan that is approved by the County by three (3) months prior to the projected date of completion of the Development Borrower will be in default of this Agreement.

Section 3.11 Equal Opportunity.

During the construction of the Development discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work is not allowed.

Section 3.12 Minority and Women-Owned Contractors.

Borrower shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in Contra Costa County of bid opportunities for the construction of the Development. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Borrower and available to the County upon request.

Section 3.13 Progress Reports.

Until such time as Borrower has received a certificate of occupancy from the City for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.17 below.

Section 3.14 Construction Responsibilities.

(a) Borrower is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the construction of the Development takes place in accordance with this Agreement.

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

Section 3.15 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

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

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Development for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, but the County has no obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 3.16 Inspections.

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

Section 3.17 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit to the County for approval any required amendments to the Approved Development Budget which increase or decrease any line item by \$25,000 or more, within five (5) days of the date Borrower receives information indicating that

actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget by such amount. Written consent of the County will be required to amend the Approved Development Budget.

Section 3.18 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l).

Section 3.19 Partnership/Asset Fee.

During the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Thirty-Two Thousand Dollars (\$32,000) per year. After the expiration of the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Twenty-Five Thousand Dollars (\$25,000) per year.

Section 3.20 NEPA Mitigation Requirements.

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

ARTICLE 4 LOAN REQUIREMENTS

Section 4.1 Match Requirement.

The Borrower shall ensure that the Loan is matched with a minimum of Seven Hundred Thirty-Seven Thousand Five Hundred Dollars (\$737,500) in other, non-federal sources, pursuant to and eligible under applicable HOME regulations.

Section 4.2 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Development, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds for the Development.

(b) No later than one hundred twenty (120) days after Permanent Closing, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development. This requirement may be satisfied by providing the Final Cost Certification to the County. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that (1) Borrower submits to TCAC, and (2) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

Section 4.3 Annual Operating Budget.

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

Section 4.4 Information.

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

Section 4.5 Records.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursement of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement are to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and are to be consistent with requirements of this Agreement. All such books, records, and accounts are to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental agency are to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements including. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. The records are to include all invoices, receipts, and other documents related to expenditures from the Loan funds. Borrower shall cause records to be accurate and current and in such a form as to allow the County to comply with the record keeping requirements contained in 24 C.F.R. 92. 508, 24 C.F.R. 570.506, 24 C.F.R. 574.450, and 24 C.F.R. 574.530. Such records are to include but are not limited to:

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

(ii) Records demonstrating the eligibility of activities under CDBG Regulations set forth in 24 CFR 570 et seq. and that use of the CDBG Funds meets at least one of the national objectives of the CDBG program set forth in 24 CFR 570.208;

(iii) Records demonstrating that each activity undertaken meets one of the eligible activities of the HOPWA program set forth in 24 C.F.R. Section 574.300 and 24 C.F.R. Section 574.310;

(iv) Records demonstrating compliance with the HUD property standards and lead-based paint requirements including the property standards of 24 C.F.R. Section 574.310(b) and the lead-based paint requirements of 24 C.F.R. Section 574.635;

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

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

(vii) Records demonstrating compliance with the CDBG, HOME, and HOPWA tenant selection, affordability and income requirements;

(viii) Records demonstrating compliance with MBE/WBE requirements;

(ix) Records demonstrating compliance with 24 C.F.R. Part 135 which implements section 3 of the Housing Development Act of 1968;

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

(xi) Records demonstrating compliance with labor requirements including certified payrolls from Borrower's general contractor evidencing that applicable prevailing wages have been paid;

(xii) Records documenting compliance with the Social Services Plan approved by the County;

(xiii) Records demonstrating Borrower's continued compliance with the CHDO requirements.

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

Section 4.6 County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which is to include information on all of Borrower's activities and not just those pertaining to the Development. Borrower shall also follow audit requirements of the Single Audit Act and OMB Circulars A-122 and 110.

(b) In addition, the County may, at any time, audit all of Borrower's books, records, and accounts pertaining to the Development including but not limited to the Residual Receipts of the Development. Any such audit is to be conducted during normal business hours at the principal place of business of Borrower and wherever records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of the audit to Borrower.

(c) If it is determined as a result of an audit that there has been a deficiency in a loan repayment to the County then such deficiency will become immediately due and payable, with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if the audit determines that Residual Receipts have been understated for any year by the greater of (i) \$2,500, and (ii) an amount that exceeds five percent (5%) of the Residual Receipts, then, in addition to paying the deficiency with interest, Borrower shall pay all of the County's costs and expenses connected with the audit and review of Borrower's accounts and records.

Section 4.7 HOME, HOPWA, and CDBG Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 C.F.R. Part 92, use of the CDBG Funds as set forth in 24 C.F.R. Part 570, and the use of the HOPWA Funds as set forth in 24 C.F.R. Part 574, including the requirements of the Regulatory Agreement and the CDBG Project Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations govern. During the HOME Reporting Term, these requirements are federal requirements, implemented by the County; thereafter, these requirements are deemed local County requirements.

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

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

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

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

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

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

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. 570.606; 24 C.F.R. 574.630; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq. If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall prepare and submit a relocation plan to the County for approval. Borrower is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Borrower shall indemnify, defend (with counsel reasonably chosen by the County), and hold harmless the County against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

(vii) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C.

1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) Uniform Administrative Requirements. The provisions of 24 C.F.R. 92.505, 24 C.F.R. 570.502, 24 C.F.R. 547.605, and 24 C.F.R. 574.650 regarding cost and auditing requirements.

(x) Housing Quality Standards. The housing quality standards set forth in 24 C.F.R. Section 574.310(b).

(xi) Supportive Services. The supportive service requirements of 24 C.F.R. Section 574.310(a)(1).

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

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

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

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

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

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

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

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

(xiii) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354 and 24 C.F.R. 570.60; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

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

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

(xvi) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not shall alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(xvii) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this Agreement.

(xviii) Religious Organizations. If the Borrower is a religious organization, as defined by the CDBG and/or HOME and/or HOWPA requirements, the Borrower shall comply with all conditions prescribed by HUD for the use of HOME Funds, CDBG Funds, and HOPWA Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257, 24 C.F.R. 570.200(j), and 24 C.F.R. 574.300(c).

(xix) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds.

Section 4.8 Hazardous Materials.

(a) Borrower shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel of its own choice in, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.8, and Section 5.1(m). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding

properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action, (iii) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder, or (iv) the action has been agreed to by the County.

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

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (i) waive its lien on such environmentally impaired or affected portion of the Property and (ii) exercise (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or

threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.9 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

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

Section 4.10 Fees and Taxes.

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

Section 4.11 Notice of Litigation.

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

Section 4.12 Operation of Development as Affordable Housing.

(a) Borrower shall operate the Development as an affordable housing development consistent with (i) HUD's requirements for use of the HOME Funds, CDBG Funds, and HOPWA Funds, (ii) the Regulatory Agreement, and (iii) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the Bond Loan, and Low Income Housing Tax Credits provided by TCAC.

(b) Before newly leasing any unit in the Development, after execution of this Agreement, but in no event more than thirty (30) days after execution of this Agreement, Borrower shall submit its proposed form of lease agreement for the County's review and approval. The Lease must not contain any provision which is prohibited by 24 C.F.R. 92.253(d) and any modifications thereto. The term of the lease for any unit in the Development is to be for no less than one (1) year, except by mutual agreement between Borrower and the Tenant. Any Borrower termination of a lease agreement for any unit in the Development or refusal to renew must be in conformance with 24 C.F.R. 92.253(c), and must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

(c) Before newly leasing any unit in the Development, after execution of this Agreement, but in no event more than thirty (30) days after execution of this Agreement, Borrower shall provide the County, for its review and approval, with Borrower's written tenant selection plan.

(d) Borrower shall evaluate the income eligibility of each Tenant household in County-Assisted Units pursuant to the County's approved Tenant certification procedures within sixty (60) days before the household's expected occupancy of one of the County-Assisted Units. Borrower shall certify each Tenant household's income on an annual basis. In accordance with the Regulatory Agreement, throughout the HOPWA Term, Borrower shall make annual certifications as to whether a Tenant of a HOPWA Unit is a HOPWA Eligible Household.

(e) Borrower shall maintain all documents setting forth the household income of each household occupying a County-Assisted Unit, and the total amount for rent, utilities, and related services charged to each household occupying the Development, as prescribed by the Regulatory Agreement.

(f) Throughout the HOPWA Term, Borrower shall ensure that social services are provided to Tenants of the HOPWA Units in accordance with Section 4.7(b)(xi) above.

Section 4.13 Nondiscrimination.

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

(b) Nothing in this Section prohibits Borrower from requiring units in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreement and Other Regulatory Agreements, and from requiring the HOPWA Units in the Development to be available to and occupied by HOPWA Eligible Households.

Section 4.14 Transfer.

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

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

(c) The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement; and (ii) in subsequent Transfers, Union Bank, N.A. or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

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

agreement to be provided by the County.

(e) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, which entity is also a qualified CHDO entity, selected by the limited partner and approved by the County, which approval shall not be withheld unreasonably, and (ii) Union Bank, N.A. or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above. If any Transfer results in the removal or withdrawal of Borrower's general partner, Borrower agrees to repay all principal and accrued interest on the HOME Funds portion of the Loan in full if the general partner is not replaced with a qualified CHDO entity in accordance with this Subsection.

(f) The County hereby approves the grant of the security interests in the Development for Approved Financing.

Section 4.15 Insurance Requirements.

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

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

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

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

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

(v) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for comprehensive general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

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

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

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

Section 4.16 Anti-Lobbying Certification.

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

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

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

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite

for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 4.17 Covenants Regarding Approved Financing and Partnership Agreement.

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(b) Borrower shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and any defaults under the Partnership Agreement, and provide the County copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County.

(d) Borrower may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

(e) The Partnership Agreement may not include any provisions that conflict with the provisions of this Agreement, including, without limitation, the Residual Receipts payment provisions of Section 2.8 above.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) CHDO Requirement. Borrower's managing general partner is a qualified CHDO in good standing as defined in 24 C.F.R. 92.2, and required in 24 C.F.R. 92.300 (a)(1).

(c) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and

observe the terms and provisions of all of the above.

(d) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(e) Valid Binding Agreements. The Loan Documents and all other documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(f) No Breach of Law or Agreement. Neither the execution nor delivery of the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Borrower, or conflict with any provision of the organizational documents of Borrower, or conflict with any agreement to which Borrower is a party, or (ii) result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(g) Compliance with Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

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

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

(j) Financial Statements. The financial statements of Borrower and other

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

(k) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Development in accordance with the terms of this Agreement.

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

(m) Hazardous Materials. To the best of Borrower's knowledge, except as disclosed in writing by Borrower to the County prior to the date of this Agreement: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property, (ii) neither the Property nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default.

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

(a) Failure to Construct. Failure of Borrower to obtain permits, commence, and prosecute to completion, construction of the Development within the times set forth in Article 3 above;

(b) Failure to Make Payment. Failure to make any payment when such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents or the CDBG Project Agreement (other than obligations described in subsections (a) and (b) above), and Borrower fails to cure such default within thirty (30) days after receipt of written notice

thereof from the County to Borrower and to any limited partner of Borrower who has requested written notice from the County of such failure ("Permitted Limited Partner"); provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. If the Permitted Limited Partner cures an Event of Default within the cure period set forth in this subsection, the County will accept such action as curing the Event of Default as if such cure was performed by Borrower. If a Permitted Limited Partner is unable to cure an Event of Default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Event of Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Event of Default, but in no event longer than sixty (60) days after the date of receipt by the Permitted Limited Partner of written notice of the Event of Default.

(d) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(e) Insolvency. A court having jurisdiction makes or enters any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

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

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

(h) Liens on Property and the Development. Any claim of lien (other than liens approved in writing by the County) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold

for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

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

(j) Unauthorized Transfer. Any Transfer other than as permitted pursuant to Section 4.14.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Loan Documents, proves to have been incorrect in any material respect when made.

(l) Applicability to General Partner. The occurrence of any of the events set forth in subsection (e), subsection (f), or subsection (g) in relation to Borrower's managing general partner, unless the removal and replacement of the Borrower's managing general partner in accordance with Section 4.14(e), within the time frame set forth in Section 6.1(c) cures such a default.

Section 6.2 Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the County is relieved of any obligation to disburse any portion of the Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County may proceed with any and all remedies available to it under law, this Agreement, and the other Loan Documents. Such remedies include but are not limited to the following:

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

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

(c) Special Remedy for Breach of Use Requirement. Pursuant to 24 C.F.R. 570.503(b)(7)(ii), if after its acquisition of the Property, Borrower changes the planned use of

the Property to a non-CDBG eligible use, or if after completion of construction of the Development, Borrower ceases to use the Development to primarily benefit low and moderate income persons, the County may require Borrower to pay to the County an amount equal to the then current market value of the Development (as determined by appraisal), less any portion of that value attributable to non-County CDBG Funds used for the development of the Development (based on a pro-rata allocation of funds used by Borrower in its development of the Development). Funds recovered from Borrower pursuant to this subsection will be credited against amounts outstanding under the Note.

(d) Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand therefore, Borrower shall reimburse the County for any funds advanced by the County to cure such monetary default by Borrower, together with interest thereon from the date of expenditure until the date of reimbursement at the Default Rate.

Section 6.3 Right of Contest.

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

Section 6.4 Remedies Cumulative.

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

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

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

contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The County Deputy Director – Department of Conservation and Development is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any discretionary change in the amount or terms of this Agreement is approved by the County's Board of Supervisors.

Section 7.4 Indemnification.

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

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

No member, official, employee or agent of the County is personally liable to Borrower in the event of any default or breach of this Agreement by the County or for any amount that may become due from the County pursuant to this Agreement.

Section 7.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 7.7 Discretion Retained By County.

The County's execution of this Agreement in no way limits any discretion the County may have in the permit and approval process related to the construction of the Development.

Section 7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

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

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

(d) Borrower shall comply with the conflict of interest provisions set forth in 24 C.F.R. 92.356, 24 C.F.R. 570.611, and 24 C.F.R. 574.625.

Section 7.9 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County: County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attention: Affordable Housing Program Manager

Borrower: Berrellesa Palms, L.P.
c/o Resources for Community Development
2220 Oxford Street
Berkeley, CA 94704
Attention: Executive Director

Investor Limited

Partner: Union Bank, N.A.
200 Pringle Avenue, Suite 355
Walnut Creek, CA 94596
Attn: CDF Division Head

With a copy to: Paul Hastings LLP
515 South Flower Street
Los Angeles, CA 90071
Attn: Kenneth Krug

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

Section 7.10 Applicable Law.

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

Section 7.11 Parties Bound.

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

Section 7.12 Attorneys' Fees.

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

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if

notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 County Approval.

The County has authorized the County Deputy Director- Department of Conservation and Development to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents.

Section 7.16 Waivers.

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

Section 7.17 Title of Parts and Sections.

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

Section 7.18 Entire Understanding of the Parties

The Loan Documents and the CDBG Project Agreement constitute the entire agreement of the Parties with respect to the Loan. If there is a conflict between the CDBG Project Agreement and the Loan Documents, the terms of the Loan Documents will prevail. This Agreement supersedes the Predevelopment Loan Agreement and CDBG Loan Agreement in their entirety.

Section 7.19 Multiple Originals; Counterpart.

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

Remainder of Page Left Intentionally Blank

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

COUNTY:

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

By: _____

Its: _____

APPROVED AS TO FORM:

SHARON L. ANDERSON
County Counsel

By: Kathleen M. Andrus
Kathleen Andrus
Deputy County Counsel

BORROWER:

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

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

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

EXHIBIT C

NEPA MITIGATION REQUIREMENTS

NEPA Mitigation and Monitoring Plan – Berrellesa Palms

All mitigations / conditions of approval must be included in project agreement and/or legal documents.
Compliance with mitigations / conditions of approval must be documented prior to final payment of County funds

Mitigation Measure(s)	Source	Method and date County staff informed Project Sponsor	Verification of Mitigation Measure(s)	Responsible for implementation	Mitigation Timing	Responsible for monitoring and reporting on implementation	Monitoring and reporting frequency	Verification of compliance	Date completed	Comments
<p>Noise: The HUD Noise study indicates a normally unacceptable category (75 DNL). However, an EIS is not required, since noise is the only issue with the project. The following noise mitigations are required in the final project:</p> <ul style="list-style-type: none"> Exterior Walls: The minimum construction being contemplated for the exterior building facades is one layer 5/8" gypsum board, 2x4 studs, R-13 batt insulation in the stud cavity, one layer of 5/8" gypsum board, and one layer of cementitious siding. This will provide a sound isolation of at least STC 38 as per laboratory tests, which will comply with HUD's requirement for 10 decibels more attenuation than standard construction (in conjunction with 	Noise Assessment January 2009 and Figure 19 for Noise Attenuation from HUD Noise Guidebook	Pre-Construction Meeting with Project Sponsor and Contractor September 25, 2012	<input type="checkbox"/> City of Martinez Approved Construction plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Once- after walls, windows, doors and vent ducts have been installed.	<input type="checkbox"/> Letter from architect <input type="checkbox"/> Copy of Final approved Building Permit		

<p>near Hazardous Operations: Based on the findings of the Revised Evaluation of HUD Acceptable Separation Distance conducted by Fugro Consultants, Inc. dated August 24, 2012, the distance from 3 out of the 12 AST/drums locations (Tanks 27, 28 and 40) to the Site is less than the minimum ASD thermal radiation distance for people/common area. In accordance with 24 CFR, Part 51 Subpart C, mitigation measures consisting of natural or existing man-made barriers can be considered adequate to mitigate potential thermal radiation effects. Existing man-made structures and other ASTs are present between these three ASTs (Tanks 27, 28 and 40) and the Site which provides an interrupted horizontal site distance. Assuming that a hypothetical blast does not destroy any of the existing features, thermal radiation effects should be considered sufficiently mitigated based on an assessment of the structures present along the lines of sight. If existing conditions at the Telfer Oil facility changed, and the existing structures were not present between the three ASTs and the Site, calculations indicate that thermal radiation would impact the closest possible location of people or common area as shown on Plate 1. Should that be the case, RCD will be required to construct an 8-foot tall barrier wall of sufficient strength along Foster Street to mitigate the thermal radiation impacts to the common area from those three un-pressurized tanks.</p>	<p>Evaluation of HUD Acceptable Separation Distance, August 24, 2012</p>	<p>Construction Meeting with Project Sponsor and Contractor September 25, 2012</p>	<p><input checked="" type="checkbox"/> Relocation Plan July 2010</p>	<p>Project Sponsor and Relocation</p>	<p>Pre construction</p>	<p>Project sponsor, architect and</p>	<p>Once – post demolition</p>	<p><input type="checkbox"/> Letter from Relocation</p>	<p>(during 55 year term)</p>		
<p>Relocation: The relocation of occupants must</p>	<p>Project application</p>	<p>Pre-Construction</p>	<p><input checked="" type="checkbox"/> Relocation Plan July 2010</p>	<p>Project Sponsor and Relocation</p>	<p>Pre construction</p>	<p>Project sponsor, architect and</p>	<p>Once – post demolition</p>	<p><input type="checkbox"/> Letter from Relocation</p>			

comply with the Uniform Relocation Act (URA)		Meeting with Project Sponsor and Contractor September 25, 2012		consultant		relocation consultant	but before construction starts	Consultant confirming Relocation has been done correctly		
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