

CONSTRUCTION LOAN AGREEMENT

AMONG

COUNTY OF CONTRA COSTA, CALIFORNIA,

U.S. BANK NATIONAL ASSOCIATION

AND

EB, L.P.

DATED AS OF _____, 2016

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CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT (this “*Agreement*”), dated as of _____, 2016 is among the **COUNTY OF CONTRA COSTA, CALIFORNIA**, a political subdivision and body corporate and politic, organized and existing under the laws of the State of California (“*Issuer*” or “*Lender*”), **U.S. BANK NATIONAL ASSOCIATION**, (“U.S. Bank”) and **EB, L.P.**, a California limited partnership (the “*Borrower*”). Pursuant to that certain Assignment of Deed of Trust and Loan Documents (the “*Deed of Trust Assignment*”) dated as of even date herewith, by and between Issuer and U.S. Bank, in its capacity as “Bondowner Representative” (in such capacity, “Bondowner Representative”) under that certain Indenture dated as of _____, 2016 (“*Indenture*”), executed by and between Issuer and Bondowner Representative, Issuer shall, concurrently with the execution of this Agreement, assign and transfer to Bondowner Representative all of Issuer’s right, title and interest in, to, and under (but not its obligations as “Issuer” under) the Loan Documents (as defined below), excluding any right expressly reserved to Issuer as “Unassigned Rights” (as defined in the Indenture). Upon the execution and delivery of the Deed of Trust Assignment, (a) all references to “Lender” under this Agreement shall mean Bondowner Representative and its respective successors and assigns, and (b) Issuer shall be referred to as “Issuer”. In its capacity as “Bondowner Representative”, U.S. Bank shall have the sole right to exercise, grant, make and/or issue all of the rights, powers, elections, determinations, approvals, consents, remedies, duties and functions of “Lender” hereunder other than the “Unassigned Rights.” Any deliveries or payments required to be made hereunder by Borrower to Lender shall be made to Bondowner Representative unless the terms of the Indenture or this Agreement expressly and specifically provide otherwise.

RECITALS

The following Recitals form the basis and are a material part of this Agreement (terms not otherwise defined in the Recitals have the meanings set forth in Section 1.1):

A. Borrower owns or will own, concurrently with the Closing Date under this Agreement, certain real property (the “*Land*”) located in the County of Contra Costa, State of California, legally described on *Exhibit A* attached to this Agreement and incorporated herein.

B. Borrower intends to acquire the Land and Improvements and to rehabilitate an existing 144-unit affordable housing apartment project located on the Land (the “*Project*”).

C. Borrower has applied to Issuer for a loan (the “*Loan*”) in the maximum principal amount of Twenty Nine Million, Four Hundred Seventy Six Thousand and No/100ths Dollars (\$29,476,000.00).

D. Issuer, in order to raise sufficient funds to make the Loan to Borrower, has determined to issue its Multifamily Housing Revenue Bonds (East Bluff Apartments), Series 2016 A, in the aggregate face amount of \$29,476,000.00 (the “*Bonds*”).

E. Subject to the issuance of the Bonds and subject to the terms and conditions of this Agreement, Issuer and Lender are willing to make the Loan to Borrower.

F. The Loan is evidenced by a Promissory Note dated as of even date herewith executed by Borrower in favor of Lender in the face principal amount not to exceed \$29,476,000.00 (the “*Note*”). The amount of the Loan has been determined based on the assumption that Borrower will receive certain Credits, as further described in this Agreement.

G. Borrower has commitments for additional financing for the acquisition and rehabilitation of the Project from the following sources:

1. Subordinate Loans and other funding as described on the Construction Funds Schedule, described on *Exhibit F*.
2. Capital contributions from the Partners in the anticipated amount of \$_____, as further described on *Exhibit E*.

H. If Borrower satisfies the “Conversion Conditions” contained in that certain Bond Purchase Agreement (the “*Permanent Commitment*”) of even date herewith by and among Borrower, U.S. Bank and California Community Reinvestment Corporation, a California nonprofit public benefit corporation (“*Permanent Lender*”), Permanent Lender will purchase a portion of the Bonds, and the Loan will convert to a term loan. Upon Conversion, this Agreement shall be supplemented by that certain Permanent Loan Agreement dated as of _____, 2016 (the “*Permanent Loan Agreement*”) by and between Borrower and Permanent Lender. To the extent that any of the terms and provisions of this Agreement conflict with the terms and provisions of the Permanent Loan Agreement, the terms of the Permanent Loan Agreement shall be deemed to amend and restate such conflicting terms and conditions contained in this Agreement. From and after the Conversion Date (as defined in the Permanent Commitment) and the purchase of the Bonds by Permanent Lender, all references in the Loan Documents to “Bondowner Representative” shall mean Permanent Lender and all references to the “Loan Agreement” shall mean this Agreement, as supplemented by the Permanent Loan Agreement.

I. Pursuant to the Note and this Agreement, Lender is requiring that Borrower maintain certain covenants, make certain covenants and representations, provide Lender with certain financial information and agree to certain other conditions to obtaining the Loan as more fully set forth in this Agreement.

1. **Definitions and Interpretation.**

1.1 Defined Terms. The following terms when used in this Agreement shall, except where the context otherwise requires, have the following meanings.

“*Acceptable Leases*” means, with respect to the Units, legally valid, binding and enforceable written lease agreements with *bona fide* tenants (excluding specifically Guarantor, employees, Affiliates, and General Partner), providing for initial lease terms of not less than six months nor more than twelve months and complying with all Laws, and all requirements set forth in the Subordinate Loan Documents, Section 6.18 of this Agreement and the Internal Revenue Code.

“*Accessibility Laws*” means any federal, state or local law, statute, code, ordinance, rule, regulation or requirement, including, without limitation, the United States Americans With Disabilities Act of 1990, as amended (the “*ADA*”), relating to accessibility to facilities or properties for disabled, handicapped and/or physically challenged persons, or other persons covered by the ADA.

“*Advance*” means (i) any portion of the Loan advanced by Lender to or for the benefit of Borrower in accordance with this Agreement; (ii) any advance by Lender to protect the Project or the lien of the Loan Documents, including any Protective Advance; and (iii) any other advance by Lender required or permitted under this Agreement.

“*Affiliate*” means, as to any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person.

“**Agreement**” means this Construction Loan Agreement, including amendments hereof and supplements hereto executed by Lender and Borrower, or otherwise required hereunder.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“**Anti-Terrorism Law(s)**” means any laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the Laws comprising or implementing the Bank Secrecy Act, and the Law administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

“**Applicable Percentage**” means the applicable percentage used for LIHTC under Section 42 of the Internal Revenue Code.

“**Appraisal**” means an appraisal meeting the Required Appraisal Standard.

“**Architect**” means Ferrari Moe, LLP, or any other licensed architect, space planner or design professional approved by Lender that Borrower may engage from time to time to design any portion of the Project, including the preparation of Plans.

“**Architect’s Agreement**” means Standard Form of Agreement between Architect and Eden Housing, Inc. dated May 1, 2015, as assigned to the Borrower by Eden Housing, Inc., and any replacement architect’s agreement approved by Lender.

“**Assignment and Subordination of Contracts**” means the Assignment and Subordination of Contracts dated as of the date hereof by Borrower in favor of Lender.

“**Assignment and Subordination of Property Manager Agreement**” means the Assignment and Subordination of Property Manager Agreement dated as of the date hereof, by and between Borrower in favor of Lender, with the consent of the Property Manager.

“**Assignment of Contract Rights**” means the Collateral Assignment of Contract Rights dated as of the date hereof, made by General Partner in favor of Lender.

“**Assignment of Construction and Development Documents**” means, collectively, the Assignment and Subordination of Architect’s Agreement, dated as of the date hereof, from Borrower to Lender and consented to by Architect, the Assignment and Subordination of Engineering Contracts, dated as of the date hereof, from Borrower to Lender and consented to by the Engineers (“**Assignment of Engineering Contracts**”), and the Assignment and Subordination of Construction Contract, dated as of the date hereof, from Borrower to Lender and consented to by the General Contractor.

“**Bank-Controlled Account**” means the bank-controlled account in Borrower’s name held by the Lender into which (a) the Funding Sources, including any portion of the Loan which Lender elects to deposit in the Bank-Controlled Account, and (b) any other amounts which the Lender requires the Borrower to deposit in the Bank-Controlled Account will be deposited.

“**Bond Documents**” means, collectively, the Indenture, this Construction Loan Agreement, the Regulatory Agreement, the Deed of Trust Assignment, the UCC-1 Financing Statements and any other document (other than the Loan Documents) now or hereafter executed by Borrower, Issuer or Lender in connection with the Bonds.

“**Bonds**” has the meaning given that term in Recital D.

“**Borrower**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Borrower’s Organizational Documents**” means the following, including any amendments and supplements: The certificate of limited partnership of Borrower and the Partnership Agreement.

“**Budget**” means the line item budget for the hard and soft Project Costs for the Project as approved by Lender and attached hereto as **Exhibit B**, as modified from time to time in accordance with this Agreement.

“**Business Day**” means a day other than a Saturday, a Sunday or a day on which lenders in the city in which the principal office of Lender is located are authorized or obligated by law or executive order to close.

“**Capital Contributions**” shall mean capital contributions to the Borrower in the aggregate amount of \$ _____, as further described on **Exhibit E**.

“**Cash Equivalents**” means and includes, on any day: (a) any evidence of debt issued by the United States government, or guaranteed as to the timely payment of principal and interest by the United States government, and maturing twelve (12) months or less after that day; (b) commercial paper issued by a corporation (other than a corporation in which Guarantor has a direct or indirect interest) organized under the laws of any state of the United States of America or of the District of Columbia, rated A-1 by Standard and Poor’s Ratings Service or the equivalent rating by another nationally-recognized ratings service acceptable to Lender and having a stated maturity date nine (9) months or less after its issue date; (c) any certificate of deposit or banker’s acceptance issued by a commercial bank that is a member of the Federal Reserve System and has a combined unimpaired capital and surplus and unimpaired undivided profits of not less than Five Hundred Million Dollars (\$500,000,000), and maturing not more than twelve (12) months after that day; and (d) any repurchase agreement (i) entered into with any Federal Reserve System member commercial bank of the size referred to in clause (c) above and (ii) secured by any obligation of the type described in any of clauses (a)-(c) above and (iii) having a market value on its date of at least one hundred percent (100%) of the repurchase obligation of that commercial bank.

“**Change Orders**” means changes in the Plans pursuant to Section 6.4 of this Agreement which have been executed in accordance with the Construction Contract.

“**City**” means the City of Pinole, California.

“**Closing Date**” means __, 2016, the date on which all conditions precedent to closing set forth in Section 3.1 have been satisfied.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means (a) all real and personal property, tangible and intangible, and the products and proceeds thereof, that secures the Loan, including but not limited to, the Project, the Personal Property, the Capital Contributions, and the Credits (to the fullest extent that a collateral interest can be granted therein), and (b) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

“**Commencement Date**” means the date which is thirty (30) days after the Closing Date.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Compensation**” has the meaning set forth in Section 9.1 (g).

“**Completion**” means the conditions set forth in Section 6.1 have been satisfied.

“**Completion Date**” means not later than _____ months following the Closing Date, by which date Borrower is required to complete the Project pursuant to Section 6.1.

“**Compliance Certificate**” means the Compliance Certificate attached as **Exhibit J** which the Borrower is required to provide quarterly or annually, as applicable.

“**Condemnation**” has the meaning set forth in Section 9.1(b).

“**Construction Contract**” means the contract between Borrower and General Contractor, or any other contract that Borrower from time to time may execute, with Lender’s consent, pursuant to which Borrower engages General Contractor to construct or rehabilitate all or any portion of the Improvements.

“**Construction Disbursement Account**” means the account held by the Lender into which the proceeds of the Loan and other Funding Sources will be deposited from time to time for the funding of Draw Requests, provided that Advances of the Loan will only be deposited once all of the applicable conditions to the Advance of that portion of the Loan to be deposited have been satisfied.

“**Construction Documents**” means any Architect’s Agreement, Construction Contract, the Plans and any other contract or agreement, public or private, regarding the construction and/or development of the Project.

“**Construction Equity Deposits**” means the portion of Capital Contributions scheduled to be available to pay for items in the Budget as shown on **Exhibit E**. Construction Equity Deposits shall not include any Capital Contributions that are intended to repay the Loan.

“**Construction Funds Schedule**” means the anticipated amount, timing, and disbursement of Funding Sources as set forth on **Exhibit F**.

“**Contingency Reserve**” means the line item established in the Budget to pay costs of the Project that are in excess of specific line items in the Budget, whether as a result of price increases, changes in the Plans or otherwise.

“**Contingent Monetary Liabilities**” means, with respect to either (i) Borrower, or (ii) the Guarantor and its Subsidiaries, as the case may be, all of any such Person’s liabilities and obligations for moneys borrowed, for payments of moneys owed on claims which have been liquidated in amount, and for payment of moneys which are contingent upon and will not mature unless and until the occurrence of some event or circumstance, including but not limited to such Person’s liability under or with regard to guaranties and indemnities, purchase agreements, letters of credit, and recourse indebtedness on projects sold to other Persons.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word “Control” including “Controlled,” “Controlling” or “Controlled by.” A Person shall

be deemed to Control another Person if the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the Controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the Controlled Person, whether through ownership of stock, by contract or otherwise.

“**Conversion**” has the meaning set forth in the Permanent Commitment.

“**County**” means Contra Costa County, California, the County in which the Project is located.

“**Credit Agency**” means the California Tax Credit Allocation Committee, the allocator of LIHTC in the State of California.

“**Credits**” means the LIHTC.

“**Deed of Trust**” means the Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, encumbering the Project, executed by Borrower, for the benefit of Lender to secure the repayment of the Loan, including any amendments, modifications and/or supplements thereto.

“**Deed of Trust Assignment**” means that certain Assignment of Deed of Trust and Related Documents dated as of even date herewith, by Issuer, in favor of Lender.

“**Default**” means an event that, with giving of notice or passage of time or both, would constitute an Event of Default.

“**Default Rate**” means the lesser of five percent (5%) per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be charged, if any (computed on the basis of a 360-day year, actual days elapsed).

“**Designated Representative**” means the Person(s) authorized by Borrower to deliver certificates, Draw Requests and other documents on behalf of Borrower to Lender in accordance with the Loan Documents, pursuant to Section 16.28 of this Agreement.

“**Developer**” means Eden Housing, Inc., a California nonprofit public benefit corporation.

“**Developer Fee**” means the developer fee in the amount of \$_____ payable to Developer pursuant to the Development Services Agreement, provided that no more than the Permitted Developer Fee Payment as set forth on **Exhibit H** shall be made during the term of the Loan.

“**Developer Fee Subordination Agreement**” means the Assignment of Development Services Agreement and Developer Fee Subordination Agreement of even date herewith between Borrower, Lender and Developer.

“**Development Items**” means engineering reports, land planning maps or plats, soils tests, environmental reports, surveys, marketing materials and brochures, building permits, licenses, easements, utility access or supply agreements, governmental or private agreements, indemnities, waivers, rights to reimbursements, abatements or benefits of whatsoever nature regarding the Project, to the extent assignable, and other documents prepared and existing for the development of the Project available on the Closing Date, with subsequent submissions to Lender of reports and studies not required to be available on the Closing Date, if requested by Lender.

“**Development Services Agreement**” means that certain Development Services Agreement, dated as of _____, 2016, between Borrower and Developer.

“**Disbursement**” means, as the case may be, disbursements by Lender in accordance with this Agreement of (a) Advances, of proceeds of the Loan; (b) Construction Equity Deposits; (c) Proceeds of the Subordinate Loans; and (d) other funds on deposit in the Construction Disbursement Account and Bank-Controlled Account.

“**Distribution**” in respect of any Person means: (a) dividends or other distributions on or in respect of any of the stock, partnership interest, membership interest, or other equity interests of such Person; and (b) the redemption, repurchase or other acquisition of any capital stock or other equity interests of such Person or of any warrants, rights or other options to purchase any such capital stock or other equity interests.

“**Draw Request**” means the Borrower’s Letter of Draw Request in the form attached hereto as **Exhibit C-1**, together with an updated Budget, including a summary spreadsheet, an Application and Certificate for Payment (AIA Document G702 and G703), and a Draw Request Certification.

“**Draw Request Certification**” means a certification from Borrower to accompany all Draw Requests under this Agreement, in the form of **Exhibit C-2** attached hereto.

“**Draw Request Spreadsheet**” means a breakdown of the Project Costs expended as of the date of the Draw Request.

[**Eden Permanent Loan**] means _____]

[“**Engineering Contracts**” means, collectively, the “Contracts” as defined in the Assignment of Engineering Contracts.

“**Engineer**” means, collectively, _____.]

“**Environmental Indemnity Agreement**” means the Environmental and ADA Indemnification Agreement of even date herewith executed by Borrower and Guarantor for the benefit of Lender.

“**Environmental Laws**” means all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including but not limited to those relating to the presence, manufacturing, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Substances; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or release of Hazardous Substances, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; and notification requirements relating to the foregoing, including, without limitation, the following statutes, and regulations adopted thereunder: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“**CERCLA**”); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. (“**RCRA**”), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“**TSCA**”); the Safe Drinking Water Act, 42 U.S.C. §§ 300 f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act

of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq.; the Hazardous Substance Account Act; California Health and Safety Code § 25300 et seq.; the Hazardous Waste Control Law; California Health and Safety Code § 25100 et seq.; the Medical Waste Management Act; California Health and Safety Code § 25015 et seq.; the Porter-Cologne Water Quality Control Act; and California Water Code § 13000 et seq., as each of the foregoing may be amended from time to time. A release of Hazardous Substance includes (a) any intentional, unintentional, knowing or unknowing presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing any Hazardous Substance at, on or into the indoor or outdoor environment or otherwise in, onto, from or about the air, water (including surface waters and groundwater), soils, subsoils or any other surface or media on-site or off-site, and (b) the abandonment or discarding of barrels, drums, containers, underground tanks, or any other receptacles ever containing any Hazardous Substances.

“**Environmental Liability**” means any claim, demand, obligation, cause of action, allegation, order, violation, damage, injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, diminution in value or any other cost or expense whatsoever, including attorneys’ fees and disbursements, resulting from the presence or use of Hazardous Substances, the violation or alleged violation of any Environmental Law, or the imposition of any Environmental Lien.

“**Environmental Lien**” means a Security Interest in favor of any third party for: (a) any liability under an Environmental Law; or (b) damages arising from or costs incurred by such third party in response to a Release or threatened Release of any Hazardous Substance or constituent into the environment.

[“**Environmental Remediation**” has the meaning set forth in Section 3.3(t).]

“**Environmental Reports**” means the following reports: _____.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations promulgated thereunder.

“**Event of Default**” means an Event of Default as set forth or described in Section 15.1 of this Agreement.

“**Excess Costs**” has the meaning set forth in Section 4.8(b)(1)

“**Excluded Swap Obligation**” means, with respect to Guarantor, any Swap Obligation if, and only to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), including by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“**Fees**” means the Loan Fee and any other fees now or hereafter due and payable by Borrower in accordance with any or all of the Loan Documents.

“**Fiscal Year**” means Borrower’s fiscal year, ending on December 31st of each calendar year; provided the same may not be changed without the prior written consent of the Lender.

“**Force Majeure**” means any act of God; acts of terrorism; strikes, shortage or unavailability of labor or materials; lockouts or labor difficulty, explosion; sabotage; accident; riot or civil commotion; act of war; fire or other casualty; legal requirements; and causes beyond the reasonable control of Borrower.

“**Funding Sources**” means the Loan, the Subordinate Loans, the Construction Equity Deposits, and any amounts deposited by the Borrower to keep the Loan In Balance.

“**GAAP**” means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the audited financial statements delivered to Lender pursuant to Article V. Whenever any accounting term is used herein and is not otherwise defined, it shall be interpreted in accordance with GAAP.

“**General Contractor**” means RCA Builders, Inc., a California corporation.

“**General Partner**” means EB LLC, a California limited liability company, and any other person or entity that owns a general partner interest in Borrower.

“**General Partner Organizational Documents**” means the following, including any amendments and supplements: The articles of organization of General Partner and General Partner’s limited liability company agreement.

“**Governmental Agency**” means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility authorized by federal, state or local laws or regulations as having jurisdiction over Borrower or the Project or the development of the Project.

“**Guarantor**” means EDEN HOUSING, INC., a California nonprofit public benefit corporation.

“**Guarantor Compliance Certificate**” means the form to be provided periodically by the Guarantor attached as *Exhibit K*.

“**Guarantor Organizational Documents**” means the following, including any amendments and supplements: The articles of incorporation of Guarantor and Guarantor’s bylaws.

“**Guaranty**” means the Repayment and Completion Guaranty.

“**Hard Cost Contingency**” means the line item established in the Budget to pay hard construction costs of the Project that are in excess of specific line items in the Budget, whether as a result of price increases, changes in the Plans, or otherwise.

“**Hazardous Substances**” means any substance or material defined in or governed by any Environmental Laws as a dangerous, toxic or hazardous pollutant, contaminant, chemical waste, material or substance, and also including urea-formaldehyde, polychlorinated biphenyls, dioxin, radon, mold, fungi, lead, lead based paint, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, including, but not limited to crude oil or any

fraction thereof, methane gas, natural gas, natural gas liquids, gasoline and synthetic gas, or any other waste, material, substance, pollutant or contaminant which would subject the owner or operator of the Project to any damages, penalties or liabilities under any applicable Environmental Laws.

“**HUD**” means the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

“**Impositions**” means all of the following: (a) all general and special real property taxes and assessments imposed on the Project; (b) all other taxes and assessments and charges of every kind that are assessed upon the Project (or upon the owner and/or operator of the Project) and that create or may create a lien upon the Project (or upon any Personal Property or fixtures used in connection with the Project), including without limitation non-governmental levies and assessments pursuant to applicable covenants, conditions or restrictions; and (c) all license fees, taxes and assessments imposed on Lender (other than Lender’s income or franchise taxes) which are measured by or based upon (in whole or in part) the amount of the obligations secured by the Project.

“**Improvements**” means the Units and all other improvements and fixtures now existing or to be constructed on the Land in accordance with the Plans.

“**In Balance**” has the meaning set forth in Section 4.8(a).

“**Indebtedness**” means in all cases without duplication, all items of indebtedness or liability of Borrower or Guarantor other than the Obligations, at any time which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a consolidated balance sheet of Borrower or each Guarantor as of the date of determination, including: (a) indebtedness for borrowed money; (b) obligations under direct or indirect guaranties of indebtedness or obligations of others referred to in clause (a) or (b) above; (c) any indebtedness secured by any Security Interest on the property of such entity; (d) liabilities in respect of unfunded Vested benefits under any Plan for which the minimum funding standards of Section 302 of ERISA have not been met; and (e) Contingent Monetary Liabilities.

“**Initial Disbursement**” has the meaning set forth in Section 3.2.

“**Insurance Escrow Account**” has the meaning set forth in Section 10.3.

“**Insurance Premiums**” means “Insurance Premiums” as defined in Section 10.3.

“**Interest Reserve**” means the line item in the Budget allocated to pay interest on the Loan through Completion of the Improvements, the initial amount of which shall be \$_____.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or Internal Revenue Service, to the extent applicable to the Credits. All references herein to sections, paragraphs or other subdivisions of the Internal Revenue Code or the regulations promulgated thereunder shall be deemed to be references to correlative provisions of any predecessor or successor code or regulations promulgated thereunder.

“**Investor**” means, U.S. Bancorp Community Development Corporation, a Minnesota corporation, and its permitted successors and assigns.

“**Issuance Date**” means the date on which the Bonds are issued.

“**Issuer**” has the meaning given to such term in the introductory paragraph.

“**Land**” has the meaning given to such term in the Recitals.

“**Laws**” means all statutes, laws, ordinances, rules, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Agency, including, without limitation, all building, zoning, planning, subdivision, fire, traffic, safety, health, disability, labor, discrimination, environmental, air quality, wetlands, shoreline and flood plain laws, ordinances, regulations and rules and (ii) all government and private covenants, conditions and restrictions applicable to the Project.

“**Lease**” means any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy, all or any portion of any space in the Project, and every modification, amendment or other agreement relating to such lease, sublease, sub-sublease or other agreement entered into in connection with such lease, sublease, sub-sublease or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“**Lender**” has the meaning given to such term in the introductory paragraph.

“**Lender Parties**” means Issuer, U.S. Bank, Project Inspector and any of their respective Affiliates, agents, directors, officers and employees.

“**LIBOR-Based Rate**” means for any day, a rate of interest per annum equal to the sum of the LIBOR Margin plus the greater of (a) zero percent (0.0%) and (b) the LIBOR Rate in effect on such day.

“**LIBOR Breakage Costs**” means any loss or expense which Lender sustains or incurs as a consequence of (i) any prepayment (whether voluntary, involuntary or required pursuant to the terms hereof) of the Loan on a day that is not a Reprice Date or (ii) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the interest rate from a LIBOR Based Rate to an alternate index selected by Lender as more particularly set forth in Section 2.2(f) hereof with respect to the outstanding principal balance of the Loan on a date other than a Reprice Date, all including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain a LIBOR Based Rate Loan hereunder.

“**LIBOR Margin**” means 1.45%.

“**LIBOR Rate**” means for each calendar month during the term of this Agreement, the one-month LIBOR Rate quoted by Lender from Reuters Screen LIBOR01 Page or any successor thereto designated by Lender, which shall be that one-month LIBOR Rate in effect two (2) New York Banking Days prior to the Reprice Date adjusted for any reserve requirement and any subsequent costs arising from a change in government regulations, such rate rounded up to the nearest one-sixteenth percent and such rate to be reset monthly on each Reprice Date. If the initial Advance occurs other than on the Reprice Date, then the initial one-month LIBOR Rate shall be that one-month LIBOR rate quoted by Lender two (2) New York Banking Days prior to the date of the initial Advance, which rate plus the percentage described above shall be in effect until the next Reprice Date. Lender’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

“**Lien(s)**” means any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise, but excluding liens for ad valorem taxes that are not delinquent), pledge, hypothecation, easement, restrictive covenant, preference, assignment, Security Interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any portion of the Project

or any interest therein, or any direct or indirect interest in Borrower, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialman's, construction and other similar Liens and encumbrances.

“**LIHTC**” refers to federal low income housing tax credits under Section 42 of the Internal Revenue Code.

“**LIHTC Documents**” means the tax credit reservation letter from the Credit Agency, the application to the Credit Agency to obtain the LIHTC, the Tax Credit LURA, any other documents required for the Credit Agency to allocate at least \$_____ of LIHTC to Borrower, and any other documents related to the allocation of LIHTC to Borrower that are reasonably requested by Lender.

“**Limited Partners**” means the Investor and all other limited partners of Borrower (if any).

“**Limited Recourse Obligation**” means an obligation that is a non-recourse obligation of Borrower, subject only to the Non-Recourse Exceptions.

“**Liquidity**” means, as of any date of calculation, with respect to any Guarantor, such Guarantor's unrestricted cash and Cash Equivalents as of such date (including unrestricted cash and Cash Equivalents of Guarantor Subsidiaries, but only to the extent the unrestricted cash and Cash Equivalents of such Guarantor Subsidiaries are included on a balance sheet for such Guarantor which is prepared in accordance with GAAP (or another accounting basis reasonably acceptable to Lender), plus the aggregate availability as of the date of calculation under any committed financing made available to the Guarantor.

“**Loan**” means the loan made by Lender to Borrower in the aggregate principal amount of up to **\$29,476,000.00**.

“**Loan Documents**” means the documents listed on **Exhibit G**.

“**Loan Fee**” means the fee payable to Lender with respect to the Loan on or before the Closing Date in the amount of \$191,594.

“**Loan Rate**” means, prior to Conversion and subject to Section 2.2(d), the LIBOR Based Rate.

“**Material Adverse Occurrence**” means any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which Lender shall determine could materially adversely affect the then present or prospective financial condition or operations of Borrower, General Partner or any Guarantor, the availability of the Credits, the value of the Improvements or the Project, or any other material Collateral securing repayment of the Loan, or impair the ability of Borrower, General Partner or any Guarantor to perform its obligations as and when required under any of the Loan Documents, as determined by Lender in its sole discretion.

“**Material Change Order**” has the meaning set forth in Section 6.4.

“**Maturity Date**” means _____, [as extended in accordance with Section 2.7 below].

“**Money Market Rate At Prepayment**” means that zero-coupon rate, calculated on the Prepayment Date, and determined solely by the Lender, as the rate at which the Lender would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of a specific

prospective Note payment or repricing date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. A separate Money Market Rate at Prepayment will be calculated for each prospective interest and/or principal payment date.

“**Money Markets**” means one or more wholesale funding markets available to and selected by the Lender, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank notes, federal funds, interest rate swaps or others.

“**Net Operating Income**” means, for any period, (a) the actual gross revenues received by Borrower from the Project during such period (including any rental assistance payments) but excluding: (i) insurance proceeds (other than rental loss insurance proceeds), (ii) condemnation proceeds, (iii) amounts paid from Reserves for capital expenditures, (iv) proceeds of the Loan or any other loan, (v) proceeds of any Subordinate Loans, (vi) Capital Contributions, (vii) security and cleaning deposits made by any tenant (except to the extent such deposits are applied against rent or other amounts then payable by the tenant under the applicable lease), and (viii) similar items and items of a nonrecurring nature, (b) as reduced by Project Expenses for such period.

“**Net Worth**” means, for any Person, as of any measurement date, the total assets of such Person as of such date minus the total liabilities of such Person as of such date, as such amounts are determined in accordance with GAAP.

“**New York Banking Day**” means any date (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“**Note**” has the meaning set forth in Recital F.

“**Obligations**” means collectively: (i) Borrower’s obligations for the payment of the Loan, interest and other charges, and all Fees; (ii) the performance of all other obligations of Borrower contained herein; (iii) the payment and performance of each and every obligation of Borrower and Guarantor contained in any other Loan Document; and (iv) the performance of each and every obligation of Borrower and Guarantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part hereof, the Note or any other Loan Document, excluding all Excluded Swap Obligations.

“**OFAC**” means the U.S. Treasury Department, Office of Foreign Assets Control.

“**OFAC List**” means the “Specially Designated Nationals and Blocked Persons List” that is maintained by OFAC and any other similar list maintained by OFAC, the Department of Treasury or included in any Executive Order of the President of the United States. The OFAC List is accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

“**Official Records**” means the Official Records of Contra Costa County, California.

“**Operating Account**” means the account or accounts maintained by Borrower into which the Project’s gross revenues are deposited.

“**Operating Budget**” means a detailed listing of all anticipated annual income and expenses from and for managing, maintaining and operating the Project (or any portion thereof) for its first full or partial Fiscal Year of operation and for each succeeding Fiscal Year of operation, prepared by Borrower and in form and substance acceptable to Lender.

“**Operating Statement**” means a current, detailed statement of income and expenses from and for managing, maintaining and operating the Project (or any portion thereof), in form and substance acceptable to Lender, certified as true, correct and complete by the chief financial officer of the General Partner of Borrower, and expressly showing all variations from the Operating Budget for the period covered thereof.

“**Partners**” means the General Partner and the Limited Partners.

“**Partnership Agreement**” means the Amended and Restated Agreement of Limited Partnership of Borrower dated as of _____, 2016, by and among the General Partner, the Limited Partners and Baywood Apartments, Inc. (as withdrawing limited partner).

“**Permanent Commitment**” means that certain Bond Purchase Agreement dated _____ 2016 among Permanent Lender, Lender and Borrower with respect to the Permanent Loan.

“**Permanent Lender**” means California Community Reinvestment Corporation.

“**Permanent Loan**” means that certain permanent loan made by Permanent Lender to Borrower in the principal amount of \$_____ represented by the purchase of Bonds in such amount from Lender pursuant to the Permanent Commitment.

“**Permitted Developer Fee Payment**” means the portion of the Developer Fee which is scheduled to be paid to the Developer in accordance with the schedule set forth on **Exhibit H**.

“**Permitted Encumbrances**” means the Liens, charges and encumbrances on title to the Land listed on Schedule B, II to the Title Policy on the Closing Date, approved by Lender and such other matters affecting title thereafter approved by Lender in writing.

“**Permitted Liens**” means, collectively, all liens on the Personal Property approved by Lender in writing.

“**Permitted Transfer**” has the meaning assigned to such term in Section 6.20(c).

“**Person**” means any entity, whether an individual, trustee, corporation, partnership, limited liability company, trust, unincorporated organization, governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and public utility.

“**Personal Property**” means all of Borrower’s right, title and interest, whether now existing or hereafter acquired, in and to all furniture, furnishings, fixtures, machinery, equipment, inventory and other personal property of every kind, tangible and intangible, now or hereafter (i) located on or about the Project, (ii) used or to be used in connection with the Project, or (iii) relating or arising with respect to the Project.

“**PIS**” means the date the Project is placed in service within the meaning of Section 42 of the Code.

“**Plan**” means each employee benefit plan covered by Title IV of ERISA whether now in existence or hereafter instituted, of Borrower or any ERISA Affiliate.

“Plans” means the plans and specifications for the development, construction and/or rehabilitation of the Improvements, all recreational features, all parking spaces, and all common improvements to be completed on the Land, as approved by Lender, in its reasonable discretion, together with any amendments or modifications thereof consented to by Lender, in its reasonable discretion.

“Pro Forma Rents” means annual minimum or base rental rates provided to Lender as adjusted upward from time to time to reflect rents for comparable properties, but not to exceed the rents permitted under Section 42 of the Internal Revenue Code.

“Prohibited Person” means any Person identified on the OFAC List or with whom a US citizen or entity organized under the laws of a state in the United States may not engage in transactions or have dealings with by any Requirements of Law, including, without limitation, embargo, sanctions or other prohibitions of United States law, regulation or Executive Order of the President of the United States.

“Project” means the rehabilitation of the Improvements as shown on the Plans, together with the Improvements and the Land.

“Project Agreements” means, collectively, all agreements entered into by Borrower in connection with the Project, including but not limited to the Construction Documents and the Development Agreement.

“Project Costs” means all costs of any nature incurred (or to be incurred) in connection with the Project reflected on the Budget, as the same may be amended or modified from time to time in accordance with this Agreement

“Project Expenses” means, for any period, all costs and expenses incurred by Borrower during the applicable period in connection with Borrower’s ownership, management, regular maintenance, operation and leasing of the Project during such period, all as determined by Lender in its sole discretion. For purposes of determining Net Operating Income, Lender shall include as Project Expenses for any monthly period (or portion thereof), in such monthly period, 1/12th of the annual Impositions, 1/12th of the annual insurance premiums for all insurance carried and/or required to be carried by Borrower with respect to the Project, 1/12th of the annual amounts then payable in respect of required deposits to Reserves and such portion of such other non-monthly expenses as the Lender may deem appropriate in its discretion.

“Project Financing Statements” means the UCC-1 financing statement(s) required pursuant to this Agreement.

“Project Inspector” means any third-party engineering or consulting firm hired by Lender to advise and assist Lender in connection with the Project.

“Property Management Agreement” means that certain Management Agreement dated as of October 1, 2015, between Borrower and the Property Manager, pursuant to which Borrower has engaged such Property Manager to manage the Project.

“Property Manager” means Eden Housing Management, Inc., a California nonprofit public benefit corporation, the initial property manager of the Project and any successor approved by the Lender.

“Protective Advance” means all necessary costs and expenses (including attorneys’ fees and disbursements) incurred by Lender (a) in order to remedy an Event of Default under the Loan Documents, which Event of Default, by its nature, may impair any portion of the Collateral for the Loan or the value

of the Collateral, interfere with the enforceability or enforcement of the Loan Documents, or otherwise materially impair the payment of the Loan or the performance of other Obligations (including, without limitation, the costs of unpaid insurance premiums, foreclosure costs, costs of collection, costs incurred in bankruptcy proceedings and other costs incurred in enforcing any of the Loan Documents); or (b) in respect of the operation of the Project following a foreclosure under the Deed of Trust.

“**Recordable Documents**” means, collectively, the Regulatory Agreement, the Deed of Trust, the Deed of Trust Assignment and the Subordination Agreements.

“**Regulations**” means collectively all Treasury Regulations (including temporary regulations) in effect from time to time adopted pursuant to the Internal Revenue Code.

“**Regulatory Agreement**” means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of _____, 2016, by and between Borrower and the Issuer, and recorded in the Official Records concurrently with the Deed of Trust.

“**Reprice Date**” means the first day of each calendar month.

“**Required Accounts**” has the meaning set forth in Article 10.

“**Required Appraisal Standard**” means an appraisal that is: (A) addressed to Lender, (B) prepared by an MAI licensed appraiser, acceptable to Lender, (C) prepared in conformance with the regulations promulgated by the appropriate federal regulatory agency pursuant to Section 1110 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3339), as amended, and the regulations thereunder, and (D) approved by Lender’s internal appraisal group.

“**Requirements of Law**” means the requirements of: (a) the organizational documents of a Person, and (b) any law, rule, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Agency, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its properties or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

“**Reserves**” means the Interest Reserve, Contingency Reserve, and any other reserves required by Lender under this Agreement.

“**Residential Lease**” means any lease for a Unit.

“**Restoration Conditions**” has the meaning set forth in Section 9.1(d) of this Agreement.

“**Right of First Refusal Subordination Agreement**” means that certain subordination agreement to be entered into among Borrower, General Partner and Investor Limited Partner in connection with the right of first refusal in favor of General Partner as set forth in the Partnership Agreement.

“**Sanctioned Country**” means, at any time, any county or territory which is itself the subject or target of any comprehensive Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person or group listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of

the government of a Sanctioned Country, or (d) any Person 50% or more owned, directly or indirectly, by any of the above.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom

“**Secretary of State**” means the Secretary of State of the State of California.

“**Security Deposit Account**” has the meaning set forth in Section 10.1.

“**Security Deposits**” has the meaning given to such term in Section 10.1.

“**Security Documents**” means, collectively, the documents identified as Security Documents on **Exhibit G** and any other mortgage, deed of trust, security agreement or assignment now, heretofore or hereafter executed to secure the Obligations of Borrower or Guarantor to the Lender under any Loan Document.

“**Security Interest**” means lien, pledge, mortgage, deed of trust, encumbrance, charge or security interest of any kind whatsoever (including, without limitation, the lien or retained security title of a conditional vendor) whether arising under a security instrument or as a matter of law, judicial process or otherwise or the agreement by Borrower, General Partner, Guarantor or any of its or their Subsidiaries to grant any lien or security interest or to pledge, mortgage or encumber any asset.

“**Seller Loan**” means that certain Subordinate loan from the seller of the Project in the amount set forth on **Exhibit F**.

“**Shortfall Funds**” has the meaning set forth in Section 9.1(d).

“**Soft Cost Contingency**” means the line item established in the Budget to pay soft construction costs of the Project that are in excess of specific line items in the Budget, whether as a result of price increases, changes in the Plans or otherwise.

“**Stored Materials**” means any and all materials, equipment, fixtures or articles of Personal Property purchased by Borrower to be placed or affixed in, on or to the Land or Improvements in connection with the construction work with respect to the Project which have not yet been incorporated in the Project.

“**Subordinate Deeds of Trust**” means the deeds granted by Borrower to secure the obligation of Borrower to repay the Subordinate Loans.

“**Subordinate Lenders**” means the entities making the Subordinate Loans.

“**Subordinate Loans**” shall mean the loans from the Subordinate Lenders as listed on the Construction Funds Schedule.

“**Subordinate Loan Documents**” means the Subordinate Note(s), the Subordinate Deed(s) and all other documents executed in connection with the Subordinate Loans, executed copies of which have been delivered to Lender on or before the Closing Date.

“**Subordinate Note(s)**” means the promissory note(s) issued by Borrower to the Subordinate Lender(s) as evidence of Borrower’s obligation to repay the Subordinate Loans.

“**Subordination Agreement**” means each subordination agreement to be entered into among Borrower, Lender and each Subordinate Lender in connection with each of the Subordinate Loans.

“**Subsidiary**” means any corporation or other entity of which more than 50% of the outstanding capital stock or interests having ordinary voting power to elect a majority of the board of directors or the board of governors or otherwise to Control the activities of such entity (irrespective of whether or not at the time other class or classes of the equity of such entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by Borrower, or by any Guarantor and any one or more of their respective Subsidiaries, or by one or more other Subsidiaries.

“**Swap Counterparty**” means, with respect to any swap with a Lender, any person or entity that is or becomes a party to such swap.

“**Swap Obligation**” means, with respect to Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act between any Lender and one or more Swap Counterparties.

“**Sworn Construction Cost Statement**” means an itemized, certified statement of actual and estimated costs of the Project, in the form of **Exhibit D** attached hereto and hereby made a part hereof, signed and sworn to by Borrower, General Contractor and the Architect, as the same may be amended or supplemented with the approval of Lender from time to time, and consistent with the items enumerated in the Budget.

“**Tax Certificate**” means that certain certificate as to arbitrage dated the date of the issuance of the Bonds, executed by Issuer and Borrower, relating to the Bonds.

“**Tax Credit LURA**” means the Low-Income Housing Tax Credit Land Use Restriction Agreement to be executed by Borrower and the Credit Agency.

“**Tax Escrow Account**” means the account held by Lender into which Borrower will deposit funds pursuant to Section 10.2.

“**Taxes**” means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but excluding Excluded Taxes and Other Taxes.

“**Title Company**” means First American Title Insurance Company.

“**Title Policy**” means an ALTA extended coverage mortgagee’s title insurance policy (ALTA Loan Policy 2006 Loan Policy of Title Insurance with Form 1 Coverage or other form satisfactory to Lender), with such endorsements as Lender may require, issued by the Title Company in the amount of the Total Loan Amount insuring the lien of the Deed of Trust to be a first and prior lien upon the Project as security for all Advances of the Loan pursuant to the terms of this Agreement, subject only to the Permitted Encumbrances and insuring against any lien claims that could arise out of the construction of the Improvements.

“**Total Loan Amount**” means \$29,476,000.00, being the maximum aggregate amount of the Loan that the Lender is (subject to the conditions set forth herein) obligated to make.

“*UCC*” means the California Uniform Commercial Code or, as applicable, the Uniform Commercial Code enacted in the applicable jurisdiction.

“*Units*” means, collectively, the 144 residential living units included within the Project, and “*Unit*” means any one of them.

“*USA Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

1.2 Singular and Plural Terms. Any defined term used in the plural in any Loan Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 Accounting Principles. Any accounting term used and not specifically defined in any Loan Document shall be construed in conformity with, and all financial data required to be submitted under any Loan Document shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Lender.

1.4 References and Other Terms. Any reference to any Loan Document or other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation”.

1.5 Exhibits Incorporated. All exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

1.6 Inconsistency. In the event of any inconsistency between the provisions of this Agreement and the provisions of any of the other Loan Documents, the provisions of this Agreement govern.

2. **The Loan; Payments; Fees.**

2.1 Principal. Subject to the terms and conditions hereof, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender in accordance with the terms of this Agreement, the proceeds of the Loan, from time to time in accordance with the terms hereof, for the purpose of acquiring and rehabilitating the Project; provided, however, that Lender shall not be obligated to make any Advance if, after giving effect to such Advance, the Advances made by Lender would exceed the Total Loan Amount.

2.2 Interest.

- (a) Borrower shall pay to Lender interest on the Note computed at the Loan Rate.
- (b) If the interest and/or charges in the nature of interest, if any, provided for by this Agreement or by any other Loan Document shall contravene any legal or

statutory limitation applicable to the Loan, Borrower shall pay only such amounts as would legally be permitted; provided, however, that if the defense of usury and all similar defenses are unavailable to Borrower, Borrower shall pay all amounts provided for herein. If, for any reason, amounts in excess of the amounts permitted by applicable usury laws shall have been paid, received, collected or applied hereunder, whether by reason of acceleration or otherwise, then, any excess amounts shall be applied to the principal of the Loan, without prepayment penalty, unless all such principal has been fully paid, in which event the excess amount shall be refunded to Borrower.

- (c) Interest on the Note at the Loan Rate shall accrue at the applicable rate for the Note on each and every Advance from and after the date it is made by Lender to Borrower. Interest accrued on the Note, computed at the Loan Rate, shall be payable on the first day of each calendar month, commencing on the first day of the next calendar month following the date the initial Advance is made. Interest computed at the Loan Rate shall be computed on the basis of a 360 day year, but shall be charged for the actual number of days principal is unpaid.
- (d) If (i) all unpaid Advances made by Lender under the Note have not been repaid on or before the applicable Maturity Date, or (ii) an Event of Default occurs pursuant to this Agreement or any other Loan Document or (iii) all amounts due under the Loan Documents otherwise become due and payable in accordance with the terms and conditions of the applicable Loan Documents, then the entire unpaid balance of all Advances made by Lender and all other Obligations shall (without notice to or demand upon Borrower), at the sole option of Lender, become immediately due and payable in full, together with all unpaid, accrued interest thereon. From and after that date following the due date until all Advances are paid in full, interest at the Default Rate shall be payable on the first day of each calendar month or at Lender's option, on demand.
- (e) If Borrower fails to make any required payment of principal and/or interest on either Note (other than the balloon payment at the Maturity Date) on or before the tenth (10th) day following the due date thereof, Borrower shall pay to Lender, in addition to interest at the Default Rate, a late payment charge equal to five percent (5%) of the amount of the overdue payment, for the purpose of reimbursing Lender for a portion of the expense incident to handling the overdue payment. This late charge shall apply individually to all payments past due and there will be no daily prorated adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights Lender may have including the right to declare all amounts owing under the Note (including principal and interest) to be immediately due and payable in full. Borrower agrees that this "late payment charge" is a provision for liquidated damages and represents a fair and reasonable estimate of the damages Lender will incur by reason of the late payment considering all circumstances known to Borrower, Issuer and Lender on the date hereof. Borrower further agrees that proof of actual damages will be difficult or impossible.
- (f) In the event that for any reason on the date for determining the LIBOR Rate Lender shall determine (which determination shall be conclusive in the absence of manifest error) that, by reason of circumstances affecting the Money Markets, adequate and fair means do not exist for ascertaining the LIBOR Rate or the

LIBOR Rate does not adequately and fairly reflect the cost of making or maintaining LIBOR Based Rate Loans, Lender shall promptly give to Borrower telephonic notice (confirmed as soon as practicable in writing) of the nature and effect of such circumstances. After receipt of such notice and during the existence of such circumstances, the interest rate applicable to the outstanding principal balance shall be determined based upon an alternate index selected by Lender, in its sole discretion, reasonably comparable to that of LIBOR, intended to generate a return substantially the same as that generated by the LIBOR Rate.

2.3 Payments. All payments and prepayments of principal of, and interest on, the Note and all Fees, expenses and other Obligations under the Loan Documents payable to Lender shall be made, without deduction, set off, or counterclaim, in immediately available funds not later than 2:00 p.m. Pacific time on the dates due, to Lender at the office specified by it from time to time, for the benefit of Lender, except as otherwise specifically provided in this Agreement. Funds received on any day after 2:00 p.m. Pacific time shall be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder, under the Note or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day and the extension of time shall be included in the computation of any interest and fees. Borrower authorizes Lender, in Lender's discretion (but without any obligation to do so), to charge any of Borrower's accounts maintained at Lender, including the Bank-Controlled Account, for the amount of any payment or prepayment on the Note or other amounts owing pursuant to any of the other Loan Documents. Borrower hereby authorizes Lender, at the discretion of Lender (but without any obligation to do so), to make an Advance in order to pay, on behalf of Borrower, any amount due under the Note or pursuant to any of the other Loan Documents without further action on the part of Borrower and regardless of whether Borrower is able to comply with the terms, conditions and covenants of this Agreement at the time of such Advance.

(i) So long as no Event of Default has occurred and is continuing, all payments received by Lender (including the proceeds of Advances for such payments) for application to the Obligations shall be applied first to pay any past due amounts in the order below, and only after all past due amounts have been paid in full, the payments then shall be applied in the order below for current amounts due:

First, to make the payment required under Section 10.2, if any, to fund the Tax Escrow Account, if not already funded from other sources.

Second, to make the payment required under Section 10.3, if any, to fund the Insurance Escrow Account;

Third, to any unpaid interest on the Note then due under the Loan Documents (but excluding any late payment charges owed to the Lender);

Fourth, to the unpaid principal balance of the Note;

Fifth, to any costs and expenses due under the Loan Documents, and any Fees due to Lender including any LIBOR Breakage Costs;

Sixth, to make any required payment currently required to fund the Reserves, if not funded from other sources; and

Seventh, to any other Obligations then due.

(ii) After an Event of Default has occurred and is continuing, all amounts received by Lender shall be applied in the order determined by Lender in its absolute discretion.

All amounts received by Lender (whether as the result of payment transmitted by Borrower or otherwise) on account of payment of interest on or principal of the Note, or other payments due under this Agreement or any other Loan Documents, as the case may be, shall be applied by Lender pursuant to this Section 2.3. Lender shall not be obligated hereunder or under any of the other Loan Documents to re-advance to Borrower any sums prepaid by Borrower, whether prepaid voluntarily or involuntarily.

2.4 Prepayments. Prior to the Conversion Date and subject to Section A.4 of the Note,

- (a) Borrower shall be entitled to prepay the Note at any time upon twenty days prior written notice to the Lender, provided that any prepayment must be at least \$100,000.
- (b) Any prepayment of principal shall be accompanied by a payment of interest accrued to date thereon; and the prepayment shall be applied to the principal installments in the inverse order of their maturities. All prepayments shall be in an amount of at least \$100,000 or, if less, the remaining entire principal balance of the Note being prepaid.

2.5 Capital Adequacy / Yield Protection. If there shall occur any adoption or implementation of, or change to, any Requirements of Law, or interpretation or administration thereof, which shall have the effect of imposing on Lender (or Lender's holding company) any increase or expansion of or any new: tax (excluding taxes on its overall income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, or reserve, capital adequacy, special deposits or similar requirements against credit extended by, assets of, or deposits with or for the account of Lender or other-conditions affecting the extensions of credit under this Agreement; then Borrower shall pay to Lender such additional amount as Lender deems necessary to compensate Lender for any increased cost to Lender attributable to the extension(s) of credit under this Agreement and/or for any reduction in the rate of return on Lender's capital and/or Lender's revenue attributable to such extension(s) of credit. As used above, the term "Requirements of Law" shall expressly include any federal, state or international law, governmental or quasi-governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd-Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Lender for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices or any similar authority and any successor thereto) that applies to Lender. Lender's determination of the additional amount under this paragraph shall be binding in the absence of manifest error, and such amount(s) shall be payable within 15 days of demand and, if recurring, as otherwise billed by Lender.

2.6 Loan Fee. On the Closing Date, Borrower shall pay to Lender the Loan Fee, which fee is fully earned when paid and shall be non-refundable.

2.7 [Option to Extend Note Maturity Date]. Upon written request of the Borrower given to Lender not less than 30 days and not more than 60 days before the then applicable Maturity Date of the Note, the Lender will extend the Maturity Date of the Note to _____, 201_ ("*Extended*

Maturity Date”), provided that as of the date the Borrower requests the extension of the Maturity Date:

- (a) No Event of Default and no other event or condition which, upon the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing, as of the date of the request for extension or as of the extension of the Maturity Date;
- (b) All Capital Contributions required to be made under the Borrower’s Partnership Agreement have been made;
- (c) The Loan is In Balance, as determined by the Lender;
- (d) Completion has occurred;
- (e) At least 90% of the Units in the Project are occupied pursuant to Acceptable Leases;
- (f) All amounts due to Lender shall have been paid by Borrower to Lender;
- (g) All representations and warranties made by the Borrower in this Agreement and the other Loan Documents shall be materially true and correct as if made on and as of the date of the extension of the Maturity Date;
- (h) There shall have been no Material Adverse Occurrence, as determined by Lender, in Lender’s sole discretion;
- (i) Borrower and Guarantor shall have executed and delivered to Lender an amendment to the Note or this Loan Agreement and such other documents as Lender may reasonably require in connection with such extension, all of which shall be in form and substance acceptable to Lender;
- (j) Borrower, at its sole cost and expense, shall have delivered to Lender an endorsement to (or reissuance of) the existing Title Policy, bringing current the effective date of the coverage, stating that the coverage afforded by the Title Policy shall not be affected because of the extension and insuring that there have been no additional liens or other additional exceptions to title against the Project from and after the date hereof, unless consented to in writing by Lender;
- (k) Borrower shall have executed, acknowledged and delivered to Lender such amendments to the Loan Documents and the Bond Documents as Lender may reasonably require to reflect the extension of the Maturity Date; and
- (l) Borrower shall have delivered to Lender all other documents, instruments, agreements, certificates, opinions of counsel, and title policy endorsements reasonably required by Lender in connection with such extension.]

2.8 Loan Mandatory Payment. Upon payment by Investor of the Second Capital Contribution as defined on *Exhibit E*, all proceeds of a portion of the Second Capital Contribution shall be applied to the balance due on the Loan as required to pay the Loan down to the amount of the Permanent Loan.

3. **Conditions to Closing and Disbursements.**

3.1 **Conditions to Closing.** On or prior to the Closing Date, Borrower shall provide to Lender each of the following, in form and substance acceptable to U.S. Bank:

- (a) Two (2) sets of the Plans or electronic versions acceptable to Lender, including all mechanical, electrical, structural and other specialized drawings that are signed by licensed engineers of the respective disciplines normally responsible for such drawings, in addition to the Architect, together with evidence of all necessary or appropriate approvals of any Governmental Agency required in connection with the Project.
- (b) A copy of the Sworn Construction Cost Statement for the Project, including the names of each subcontractor and material supplier. If requested by Lender, Borrower shall also furnish to Lender a copy of each contract with each of the subcontractors and material suppliers.
- (c) A written report in form and substance acceptable to Lender from Project Inspector with respect to its review of the Plans and Sworn Construction Cost Statement.
- (d) A signed copy of the Assignment of Construction and Development Documents.
- (e) A copy of the complete fully executed Architect's Agreement.
- (f) A copy of the fully executed Construction Contract, including all exhibits, which is consistent with the cost allocations established under the Budget and otherwise in form and substance satisfactory to Lender.
- (g) A schedule listing all executed subcontracts relating to the Project having a contract sum in excess of \$100,000, and any other engineering, architectural, and construction contracts, subcontracts and schedules relating to the Project as Lender may require.
- (h) Two (2) copies or electronic versions acceptable to Lender of a current, certified ALTA/ACSM Survey of the Land, which shall be prepared in accordance with Lender's standard requirements therefore (a copy of the requirements having previously been delivered to Borrower).
- (i) The following Project related documents: (i) a flood zone certification from a consultant acceptable to Lender indicating that the Project is not located in a flood plain or any other flood-prone area as designated by any governmental agency; provided, however, that if the Project is so located, Borrower shall provide proof of flood insurance acceptable to Lender; (ii) copies of all permits, licenses, approvals and other authorizations of any Governmental Agency required in connection with the Project, including grading and excavation permits and evidence that the Land is in compliance with all platting and subdivision laws, (iii) all applicable wetlands and stormwater management permits and regulations applicable to the Project have been obtained (or waived in writing) and complied with so that the Project, including without limitation its design, engineering and construction, will not be adversely affected by the application

and enforcement of the permits and/or regulations; and (iv) a soils report for the Land.

- (j) The Environmental Reports addressed to Lender or, in the event the Environmental Reports are not addressed to the Lender, the Environmental Reports together with a reliance letter addressed to Lender in compliance with Lender's requirements. The Environmental Reports shall include a Phase I environmental site assessment prepared by a licensed and registered environmental engineer or other qualified party satisfactory to Lender, stating that no Hazardous Substances are present in, on, under or around the Project, and that no condition or circumstance warranting further investigation now exists, except as approved in writing by Lender. Borrower shall also provide copies of all environmental documents prepared, adopted, certified or filed by or with any Governmental Agency in connection with the Project, including, without limitation, any initial study or environmental impact report, prepared, adopted, certified or filed by or with any Governmental Agency. If there is an underground storage tank on the Project, evidence of compliance with all Laws related to underground storage tanks and, if required by Lender, evidence that the storage tanks have been removed in accordance with applicable Laws and any Environmental Remediation, if any, completed.
- (k) Evidence of insurance, together with "paid" receipts, if required by Lender, indicating that all insurance currently required under the terms of *Exhibit L*, attached hereto, is in place.
- (l) Borrower's estimated schedule for construction of the Improvements in accordance with the Plans, and an estimated draw schedule for disbursement of the proceeds of the Loan.
- (m) Evidence of zoning and other land use compliance, including a letter from an appropriate officer of the City regarding zoning and building code compliance, prepared in accordance with Lender's standard requirements.
- (n) A certificate addressed to Lender from the Architect certifying that the Plans comply with Accessibility Laws and other Requirements of Law and that the Improvements, when completed, will comply with Accessibility Laws and other Requirements of Law, in form acceptable to Lender.
- (o) A copy of the Borrower Organizational Documents, certified as true, correct and complete by the General Partner of Borrower authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which Borrower was organized (and from the jurisdiction in which the Land is located, if different from the jurisdiction in which Borrower was organized), and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated hereby.
- (p) A copy of the General Partner Organizational Documents, certified as true, correct and complete by an officer of General Partner authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which General Partner was organized (and from the jurisdiction in which the Land is located, if different from the jurisdiction in which General Partner was

organized), and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated by this Agreement.

- (q) A copy of Guarantor's Organizational Documents, certified as true, correct and complete by an officer of the applicable Guarantor authorized to do so, together with (i) a current certificate of good standing from the jurisdiction in which such Guarantor was organized, and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated hereby.
- (r) The most current available financial statements of Borrower, General Partner, and Guarantor, signed and certified as true, correct and complete by an authorized representative thereof, together with any tax returns or other financial information required by Lender.
- (s) The payment of (i) all Fees due to Lender as of closing and (ii) all costs and expenses incurred by Lender, including attorneys' fees, in connection with the making of the Loan and the negotiation, preparation and closing of the Loan Documents.
- (t) An Appraisal in form and substance acceptable to Lender in its sole and absolute discretion.
- (u) A proposed Operating Budget for the Project for its first year of operation.
- (v) Letters addressed to Lender or existing bills from the suppliers confirming the availability of water, storm and sanitary sewer, gas, electric and telephone utilities for the Project
- (w) The Title Company's unconditional commitment to issue the Title Policy and record the Deed of Trust,
- (x) Copies of any closing instruction letter and settlement statement, when applicable.
- (y) An original executed opinion of counsel to Borrower, the General Partner and the Guarantor, addressed to Issuer and Lender and in form and substance satisfactory to Issuer and Lender, opining as to the due formation, qualification and good standing of Borrower, the General Partner and the Guarantor, the due authorization by Borrower, the General Partner and the Guarantor of the execution, delivery and performance of the Loan Documents, the due execution and delivery of the Loan Documents, and the enforceability of the Loan Documents, and covering such other matters as Issuer and Lender may require.
- (z) An original opinion of "bond counsel" addressed to Lender, opining as to the due execution, delivery and performance by the Issuer of the Indenture, the enforceability against the Issuer of the Indenture, and the availability of an exclusion from gross income for purposes of federal income taxation for interest paid on the Bonds, other than Bonds owned by ___ substantial user of the Project of any related person within the meaning of Section 147(a) _____ .

- (aa) A signed copy of the Property Management Agreement and the Assignment and Subordination of Property Manager Agreement and a copy of each agreement relating to the management, operation or maintenance of the Project and of each agreement which cannot be cancelled by thirty (30) days' or less notice.
- (bb) A signed copy of the Assignment and Subordination of Contracts.
- (cc) A signed copy of the Development Services Agreement.
- (dd) All other agreements, documents and/or exhibits which may be required, in Lender's judgment, to assure compliance with the requirements of this Agreement.
- (ee) Written evidence that the Title Company has recorded the Recordable Documents in the Official Records or "gap" coverage from the Title Company.
- (ff) The LIHTC Documents with evidence that the commitment by the Credit Agency to allocate credits in an amount acceptable to Lender is in full force and effect, confirming the reservation or allocation to Borrower of sufficient LIHTC to support the Investor's investment in an amount no less than the aggregate amount of the Capital Contributions.
- (gg) Investor shall have made the First Capital Contribution set forth on **Exhibit E** and all such funds shall have been delivered to Lender for deposit into the Bank-Controlled Account or applied directly by the Title Company on the Closing Date to pay Project Costs set forth on the Budget and in accordance with an escrow settlement statement approved by Lender.
- (hh) Copies of the Subordinate Loan Documents, each fully executed and each in a form acceptable to Lender in its sole and absolute discretion.
- (ii) Borrower and Subordinate Lenders shall have duly executed and delivered to Lender the Subordination Agreement in a form and substance acceptable to Lender, in its sole and absolute discretion.
- (jj) A payment and performance bond in an amount not less than the guaranteed maximum price or fixed price set forth in the Construction Contract from a surety approved by Lender and licensed to do business in California, naming Lender as dual obligee, from General Contractor, in form and substance acceptable to Lender in its sole and absolute discretion.
- (kk) Written evidence that those certain Subordinate Loans as set forth on the Construction Funds Schedule that are required to be funded on or before the Closing Date have been made to Borrower by the Subordinate Lenders to finance a portion of the Project Costs, which Subordinate Loans shall be deposited in the Bank-Controlled Account and be disbursed in accordance with the terms of this Agreement.
- (ll) (i) Permanent Lender shall have agreed to make the Permanent Loan to Borrower as a permanent financing source for the Property; (ii) Lender shall have received and approved final fully-executed copies of the Permanent Loan Commitment,;

(iii) Permanent Lender shall not have indicated that it will not honor the terms of the Permanent Commitment or that it will not make the Permanent Loan for any reason; and (iv) no breach, default or failure of condition shall have occurred and be continuing under the Permanent Commitment.

(mm) Written evidence that the Title Company has committed to insure the Loan.

3.2 Conditions Precedent to Initial Disbursement. Subject to the terms and conditions of this Agreement, U.S. Bank agrees to approve the disbursement of proceeds of the Loan (each disbursement of funds to be referred to as a “*Disbursement*”) for Project Costs set forth on a Draw Request. Lender’s approval of the initial Draw Request (the “*Initial Disbursement*”) shall be subject to the satisfaction of all of the conditions for closing set forth in Section 3.1 and receipt of the following by Lender, each in form and substance acceptable to Lender and satisfaction of the following conditions precedent, unless the requirement is waived in writing by the Lender:

- (a) Written evidence that the Project Financing Statements have been filed with the Secretary of State or other appropriate office, together with evidence that the Collateral covered thereby is subject to no prior Liens, other than Permitted Liens or Permitted Encumbrances, as applicable.
- (b) Unless otherwise waived in writing by Lender, Lender shall have available unexpended Loan Proceeds or Funding Sources deposited by Borrower in the Bank-Controlled Account and Construction Disbursement Account so that the Loan will remain “In Balance”, taking into account the amount of interest due on the Loan through the Maturity Date.
- (c) A Draw Request for costs, expenses and fees which have been actually incurred by Borrower and are directly connected with the Project. Borrower shall provide the Draw Request and copies of all supporting invoices, purchase orders, and lien waivers to the Title Company and to Lender’s Project Inspector.
- (d) Any Development Items and any other documents and assurances as Lender may reasonably request.
- (e) Borrower shall establish the Operating Account with Lender.
- (f) Borrower shall establish the Construction Disbursement Account with Lender.

3.3 Conditions Precedent to All Disbursements. U.S. Bank’s approval of any Disbursement (including the Initial Disbursement) shall be further subject to the satisfaction of each of the following conditions at the time of each requested Disbursement:

- (a) No Event of Default shall be continuing and no event shall have occurred or condition exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default, and Lender shall have received a certificate to that effect signed by the Designated Representative. No Event of Default shall result from the making of the Disbursement.
- (b) The representations and warranties set forth in this Agreement shall be true and correct as of the date of the Disbursement as if made on and as of such date.

- (c) No Material Adverse Occurrence shall have occurred and be continuing on the date of the Draw Request or the date of the Disbursement.
- (d) No litigation, arbitration or governmental investigation or proceeding shall be pending, or to the knowledge of Borrower threatened, against Borrower or affecting the operations of Borrower which, if determined adversely to Borrower, would constitute a Material Adverse Occurrence.
- (e) As of the date immediately prior to any requested Disbursement and after giving effect to the requested Disbursement, the Loan will be In-Balance under Section 4.8 and in Lender's judgment Borrower can finish the Project and pay for it without obtaining additional funds (other than sources of funds identified in the Construction Funds Schedule).
- (f) Borrower shall have made payment to General Contractor for the amounts covered by all prior Draw Requests.
- (g) Lender shall have received the Title Policy within 30 days of the Closing Date.
- (h) Lender and the Title Company shall have received a conditional waiver of mechanic's lien and/or materialman's lien, executed by the General Contractor in the amount of the lienable costs of the Project payable from the requested advance, together with unconditional waivers of mechanic's lien and/or materialman's lien executed by General Contractor and each General Contractor to which any portion of the immediately preceding advance has been paid.
- (i) Lender shall have determined in its reasonable discretion, based upon its own inspections or the Project Inspector's inspections or other evidence satisfactory to it, that the Project is being constructed in a good and workmanlike manner by appropriate means in accordance with the Plans and that all required Governmental Agency inspections and approvals have been obtained as and when necessary or desirable.
- (j) There have been no occurrences which would result in a loss or material reduction in the amount of any of the Credits.
- (k) Borrower shall have satisfied all of the terms and conditions of this Agreement.
- (l) Lender shall have received a Draw Request, together with all documentation required by Section 4.7, and copies of the Draw Request shall have been delivered to the Project Inspector.
- (m) All proceeds of the Subordinate Loans shall have been disbursed to Borrower to the extent that funding is required pursuant to the Construction Funds Schedule, which Subordinate Loans shall be deposited in the Bank-Controlled Account and be disbursed in accordance with this Agreement.
- (n) All amounts then due and owing in respect of the Capital Contributions required to be made pursuant to, and in accordance with, the Partnership Agreement on or prior to the date of the requested Disbursement shall have been paid or otherwise provided for to the reasonable satisfaction of Lender.

- (o) Lender shall have received a report from its Project Inspector approving the subject Draw Request in form and substance satisfactory to Lender.
- (p) Lender shall have received prior to each Disbursement, a current ALTA Endorsement No. 122 (Downdate Endorsement) to the Title Policy or such other documentation acceptable to Lender as may be required for the Title Company to issue an endorsement to and continuation of the Title Policy covering the amount of the requested Advance, and all Advances made to date, reflecting there have been no mechanics' or materialman's liens filed since the date of the issuance of the Title Policy, and updating the effective date of the Title Policy to the relevant Advance date. All endorsements must be satisfactory to Lender and are at the sole cost and expense of Borrower.
- (q) Neither the Project, the Improvements, to the extent then constructed, nor any part thereof shall have been materially damaged, destroyed, condemned or threatened with condemnation until the Restoration Conditions have been satisfied.
- (r) No order or notice shall have been made by, or received by, Borrower from any Governmental Agency stating that the construction is or will be in violation of any Requirements of Law affecting the Project.
- (s) No Lien or notice of intent to file a Lien for work or services performed in or on the Project or materials or equipment delivered thereto shall have been recorded against the Project or delivered to Borrower, Title Company or Lender, unless the Lien(s) are bonded over or otherwise resolved to the satisfaction of Lender.
- (t) [As a condition to the approval of a Disbursement for any Environmental Remediation: (i) Borrower shall have completed the remediation work for which a Disbursement is requested in accordance with the Environmental Reports (the "*Environmental Remediation*"); (ii) Borrower shall have provided evidence of the Environmental Remediation for which a Disbursement is requested to Lender; (iii) Borrower shall have obtained any necessary approvals from Governmental Agencies with respect to the Environmental Remediation described in the Draw Request; and (iv) Lender has accepted the evidence of Environmental Remediation.]

3.4 Conditions Precedent to Final Disbursement. In addition to continued compliance with the conditions set forth in Sections 3.1, 3.2, and 3.3 hereof, U.S. Bank's approval of the final Disbursement shall be subject to the satisfaction of the following conditions precedent, each of which Borrower shall satisfy as promptly as is reasonably possible:

- (a) Lender shall have received written evidence that the Improvements shown on the Plans are complete or will be complete upon the making of the final Disbursement, as described in Section 6.1, including but not limited to (i) a Certificate of Substantial Completion on Form AIA G704 or such other form as Lender may reasonably require; and (ii) a final certificate of occupancy issued by the appropriate Governmental Agency.
- (b) Receipt by Lender of an ALTA Endorsement 100 or such title insurance endorsements as Lender may require to the Title Policy insuring that the

Improvements have been completed free of any Liens and that no encroachments exist over any building, zoning, easement, right of way or property boundary lines, other than encroachments permitted by valid easements approved by Lender.

- (c) Receipt by Lender of executed Form AIA G706/706A with final lien waivers attached or such other form reasonably required by Lender or Title Company and written lien waivers releases from General Contractor and all suppliers of labor and materials to the Project.
- (d) Receipt by Lender of a written report from the Project Inspector stating that it has conducted inspections of the Project and that all work has been fully completed in a good workmanlike manner and substantially in accordance with the Plans, and in accordance with requirements of all Governmental Agencies.
- (e) Receipt by Lender of written evidence that all Project Costs, upon making the final Disbursement, shall have been paid in full.
- (f) If required by Lender, receipt by Lender of final as-built Plans for the Improvements.
- (g) Receipt by Lender of a certificate satisfactory to Lender from the Architect confirming that the Property complies with all Accessibility Laws.
- (h) If required by Lender, receipt by Lender of a final ALTA as-built survey of the Land and Improvements showing the location of all completed Improvements on the Land.
- (i) Receipt by Lender of a recorded Notice of Completion for the Project complying with California Civil Code Section 8182 recorded in the Official Records.
- (j) Receipt by Lender of written evidence that all insurance required pursuant to Article 9 has been obtained and all Insurance Premiums have been paid.
- (k) Receipt by Lender of all LIHTC Documents that have not been received and any amendments or updates to the LIHTC Documents, provided that Borrower shall only be required to deliver documents that typically should be available as of the date that final Disbursement occurs.

4. **Disbursement.**

4.1 **General.** Provided no Default or Event of Default has occurred and is continuing, the proceeds of the Loan shall be advanced by the Lender for Project Costs for the benefit of Borrower in accordance with the terms and conditions set forth in this Section 4. All proceeds of the Loan advanced by the Lender shall constitute a loan made to Borrower under this Agreement, evidenced by the Note and secured by the Loan Documents. The Loan is not a revolving loan and the total Advances shall not be reduced by any payments made by Borrower when calculating the remaining available proceeds of the Loan to be disbursed. Lender reserves the right to make Advances of amounts on the Note which are allocated to any of the designated items in the Budget for soft or hard costs related to the Project, and rehabilitation of the Improvements or for such other purposes or in such different proportions as Lender may, in its sole discretion, deem

necessary or advisable. Borrower may not reallocate items in the Budget without the prior written consent of Lender in each instance; provided, however. Lender's consent shall not be required for a requested reallocation if the Budget remains In Balance and the reallocation effects changes that are not in excess of: (a) as to any single line item, the greater of \$25,000 and 10% of the line item, and (b) as to the aggregate of all line items in the Budget not more than the greater of \$100,000 and 5% of total Budget. Notwithstanding the foregoing, any reallocation of the Reserves, including the Contingency Reserves, Interest Reserve, Soft Cost Contingency and Hard Cost Contingency shall be subject to the prior written approval of Lender.

4.2 No Waiver. No Advance shall constitute a waiver of any condition precedent to the obligation of any Lender to make any further Advance, or preclude Lender from thereafter declaring the failure of Borrower to satisfy any condition precedent to be an Event of Default. All conditions precedent to the obligation of Lender to make any Advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any condition precedent or shall be entitled to assume that Lender will make or refuse to make any Advance in the absence of strict compliance with the conditions precedent.

4.3 Advances for Sums Due to Lender. Lender will advance to itself, when due, from the proceeds of the Loan, without further order or request from Borrower, all interest payable to Lender under the terms hereof or of the Note (so long as the conditions to such Advance have been satisfied, or waived by Lender, and sufficient funds remain in the Interest Reserve), and may, at Lender's option, without any obligation to do so, advance to itself all other sums due or to become due to Lender under this Agreement or under any of the other Loan Documents, including but not limited to its fees, reasonable attorneys' fees, Project Inspector fees, Appraisal fees, internal Appraisal review fees and other fees, administrative fees and expenses, syndication and transfer costs, and all other out-of-pocket costs and expenses incurred by Lender in connection with this Agreement and with the Loan. Lender shall also have the right, but not the obligation, to advance and directly apply the proceeds of the Loan to the satisfaction of any of Borrower's other obligations hereunder or under any of the other Loan Documents.

If the total amount of the Loan exceeds the amount needed to fully pay all items set forth on the Budget approved by Lender, Lender shall not be required to advance, and Borrower shall not be entitled to receive, the excess.

4.4 Advances for Developer Fee. Notwithstanding anything herein to the contrary, Lender shall not be obligated to advance any proceeds of the Loan in payment of or reimbursement for any portion of the Developer Fee payable to Borrower as shown on the Budget, so long as any Default or Event of Default has occurred and remains uncured. In addition, payments for Developer Fee shall not exceed the Permitted Developer Fee Payment.

4.5 Disbursement for Materials Not Incorporated Into the Project. When a Draw Request includes a request to pay for Stored Materials not yet installed or incorporated into the Project, Lender shall not be required to consent to the disbursement for Stored Materials, provided that Lender may, at its sole discretion consent to Disbursement for Stored Materials if: (a) Borrower provides Lender and the Project Inspector with (i) copies of related bills of sale, receipts, invoices and bills of lading demonstrating that Borrower has good title to the Stored Materials free of any encumbrances, (ii) satisfactory evidence that (a) the place of storage for such Stored Materials is on the Land or in a secure or bonded warehouse located in the jurisdiction in which the Land is situated and is readily accessible, and (b) the owner of such facility has received written instruction such that the Lender shall have access and the right to remove the Stored Materials, (iii) satisfactory evidence that the materials are adequately secured and insured, with Lender

identified as an additional insured and loss payee, (iv) a copy of the Stored Materials log, and (v) photographs of the Stored Materials; (b) to the extent requested by Lender, Borrower shall also provide copies of UCC searches against Borrower, the materials vendor, the General Contractor, and the warehouseman, if applicable, indicating no liens or claims which may affect the Stored Materials; (c) all Stored Materials shall be clearly tagged with the Borrower's name and stored separately to avoid commingling, and shall be incorporated into the Project as promptly as possible and in any event within sixty (60) days after the date of the Disbursement for the Stored Materials; and (d) Borrower shall provide Lender, the Project Inspector and any applicable Governmental Agency or testing authority having jurisdiction over the Project with access to inspect, test or otherwise examine the Stored Materials.

4.6 Payments from Interest Reserve. To the extent that there is insufficient Net Operating Income to pay interest when due on the Note and there are sufficient funds in the Interest Reserve line item to pay such amounts, Lender shall make Advances of Loan proceeds from the Interest Reserve available once each month to pay interest.

4.7 Draw Requests. Borrower shall deliver a Draw Request to Lender on a monthly basis (and no more than once per month) together with evidence of the Project Costs funded during the preceding month (whether from proceeds of the Loan or otherwise). Draw Requests must be submitted at least ten (10) Business Days prior to the date of the requested Advance. Borrower shall also concurrently deliver a copy of the Draw Request directly to the Project Inspector. Each Draw Request shall include:

- (a) Borrower's signed Letter of Draw Request.
- (b) Borrower's signed Draw Request Certification.
- (c) An updated Draw Request Spreadsheet.
- (d) Original AIA Forms G702/703 from the General Contractor and, if applicable, any subcontractors and any material suppliers, signed and notarized by the General Contractor, and any subcontractors and material suppliers, including a certification by the Architect.
- (e) An itemized payee list including a summary and copies of all invoices included in the Draw Request which shall not be more than 90 days old, together with any supplemental items required by Lender, including invoices for soft costs.
- (f) Lien waivers as required by Section 3.3.
- (g) Such other information as is required by Lender to support the Draw Request.

Upon receipt of a Draw Request, Lender shall cause the Project Inspector to inspect the Improvements (if the inspection has not already been scheduled or completed prior to Lender's receipt of the Draw Request) and to confirm progress of the construction work with respect to the costs of the work. If Lender determines that construction is proceeding on schedule in accordance with the Plans and otherwise in the manner required by this Agreement and that all conditions to the requested Disbursement shall have been fulfilled, Lender shall make the Disbursement on the date requested by Borrower or as close to the requested date as is commercially reasonable (not to be less than ten (10) Business Days from delivery to Lender of the Draw Request and all items required pursuant to this section). Lender may make any

Disbursement by deposit into the Operating Account, by check payable to Borrower, or by check payable jointly to Borrower and any general contractor, subcontractor or other claimant, or directly to any such claimant, or by any other means reasonably selected by Lender.

4.8 Loan “In-Balance”.

- (a) Notwithstanding anything in this Agreement or the Loan Documents to the contrary, Borrower shall at all times cause the Loan to be In Balance, and Lender shall have no obligation to fund any Disbursement or perform any other act unless and until the Loan is In Balance. The Loan shall be deemed to be “**In Balance**” only when the maximum principal amount of the Loan, less the sum of the funded Advances, plus the sum of (a) the undisbursed portion of the Construction Equity Deposits, (b) the undisbursed portion of the Subordinate Loans, and (c) any other available Funding Sources for the Project described on the Construction Funds Schedule (as determined by Lender), shall equal or exceed the amount reasonably estimated by Lender to pay for all work done or to be done and all materials furnished and to be furnished for the completion of the Project in each category of cost referred to in the Budget, including installation of all fixtures, equipment, and all other finish materials required for use, occupancy and operation of the Project, and to pay interest on the Loan, including but not limited to any interest through the Maturity Date of the Loan (taking into account any extension of the Maturity Date if the Maturity Date of the Note has been extended) and all other costs required to be paid by Borrower in connection with the Project.
- (b) If at any time and for any reason the Loan is not In Balance in accordance with this Section, Borrower shall, within five (5) days of receiving written or verbal notice from Lender, do one or more of the following:
 - (i) provide satisfactory evidence to Lender that Borrower has previously paid any excess or additional costs for the Project (collectively, the “**Excess Costs**”) or has otherwise provided for the insufficiency with funds from a source other than the Loan, Subordinate Loans, Construction Equity Deposits, or other available Funding Sources; or
 - (ii) reallocate, subject to Lender’s approval, sufficient funds to pay the Excess Costs from funds allocated to “Contingency” in the Budget; or
 - (iii) Pay to the Lender an amount equal to the Excess Costs which shall be deposited in the Bank-Controlled Account.

Without limitation upon the foregoing, Lender shall have no obligation to make any further Disbursements until Borrower has paid or otherwise provided for the Excess Costs as required above.

4.9 Cost Savings. Upon completion of all work, materials and service described in any line item in the Budget and the payment in full for all work, materials and services covered by such line item in the Budget, then, upon Borrower’s request, any remaining undisbursed amounts allocated to that line item may be reallocated to the “Contingency” line item in the Budget and be available for Disbursement for Project Costs in accordance with the terms of this Agreement.

4.10 Retainage. Lender shall withhold retainage equal to the greater of (i) percentage required under the Construction Contract, as approved by Lender, intended for payment of hard costs as required by the Budget, and (ii) ___ percent (_%) of the value (as certified to the Project Inspector) of the materials and labor incorporated in the Project from time to time pursuant to the Construction Contract. All amounts retained by Lender shall be disbursed upon satisfaction of all conditions to the final Disbursement set forth in Section 3.4.

4.11 Contingency. Lender shall not have any obligation to consent to any Disbursement from funds allocated in the Budget to the “Contingency” line item, or to consent to any reallocation to any other line item of funds allocated in the Budget to the “Contingency” line item.

4.12 Budget. Lender shall have no obligation to consent to any request for any Disbursement for any budgeted item of cost designated to be paid from proceeds of the Loan in any greater amount in the aggregate than the aggregate amount budgeted for that item in the Budget.

4.13 Subcontractor Verification. Borrower hereby grants Lender (and the Title Company) the right to contact and obtain information from the General Contractor and all subcontractors and material suppliers, including the right to obtain copies of all subcontracts and material supply contracts, and to verify and determine the status of performance and payment with respect to the Construction Contract or any subcontract or material purchase order.

4.14 Waiver of Disbursement Conditions. Lender may in its sole discretion waive any condition to the funding of a Disbursement. Any waiver of any condition to the funding must be expressly made and signed by an authorized officer of Lender. Lender shall not have made or be deemed to have made any waiver of any condition to the funding of any Disbursement as provided herein. The approval of any Draw Requests by Lender shall not constitute approval by Lender of any work, costs or expenses for which the Disbursement is made, or of any design, manufacturing, structural or other defect in any such work. The approval of any Disbursement prior to fulfillment of one or more conditions thereof shall not be construed as a waiver of any condition, and Lender reserves the right to require fulfillment of any and all conditions prior to approving any subsequent Disbursement.

4.15 All Disbursements Secured by Loan Documents. It is expressly agreed that any Advances made by Lender, from time to time, for whatever purposes, no matter to whom made, shall, as and when made, be deemed authorized by Borrower and made pursuant to this Agreement, and shall become and remain secured by the Loan Documents and considered part of the obligations secured thereby. These provisions shall apply whether or not Lender is then obligated to approve any Disbursement, and whether or not Lender has approved the Disbursements, or an Event of Default exists under any of the Loan Documents.

4.16 No Liability for Disbursements. Under no circumstances shall Lender be responsible or liable to any Person, including without limitation, Borrower for or on account of any disbursement of, or the failure to disburse, any of the proceeds of the Loan (or any portion thereof). The foregoing shall be in addition to all other limitations on the responsibility and liability of Lender set forth in this Agreement.

5. General Representations, Warranties and Covenants.

As a material inducement to Issuer’s issuance of the Bonds, Lender’s entry into this Agreement, and Lender’s purchase of the Bonds, Borrower represents and warrants to Issuer and Lender as of the date

hereof and during the term of this Agreement (except as otherwise disclosed to and consented to by Lender) that:

5.1 Formation, Qualification and Compliance.

- (a) Borrower (a) is a limited partnership validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. Borrower is in compliance with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business. Borrower will continue to operate its business in accordance with all Laws and shall require all tenants to comply with all Laws. Borrower shall not amend, modify, supplement or restate Borrower's Organizational Documents without the prior written consent of Lender, except as otherwise expressly permitted herein, nor shall Borrower cancel or terminate Borrower's Organizational Documents without the prior written consent of Lender.

- (b) General Partner (a) is a limited liability company validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in every jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Loan Documents. General Partner is in compliance in all material respects with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business. General Partner shall not amend, modify, supplement or restate General Partner's Organizational Documents without the prior written consent of Lender, nor shall General Partner cancel or terminate General Partner's Organizational Documents without the prior written consent of Lender.

- (c) Guarantor (a) is a corporation validly existing and in good standing under the laws of the State of California, (b) has all requisite authority to conduct its business and own and lease its properties, and (c) is qualified and in good standing in the State of California and in each other jurisdiction in which the nature of its business makes qualification necessary or where failure to qualify could have a material adverse effect on its financial condition or the performance of its obligations under the Guaranty. Guarantor is in compliance in all material respects with all Laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished or will accomplish by the date required by applicable Laws, all filings, registrations and qualifications with, any Governmental Agency that are necessary for the transaction of its business.

5.2 Execution and Performance of Loan Documents. Each of Borrower, General Partner and Guarantor has all requisite authority to execute and deliver, and to perform its obligations under, the Loan Documents. Borrower shall timely perform its obligations under the Loan Documents and shall not cause or permit the occurrence of any default under the documents to which it is a party.

- (a) The execution and delivery by each of Borrower, General Partner and Guarantor of, and the performance by each of Borrower, General Partner and Guarantor of its respective obligations under, each Loan Document that it has executed have been authorized by all necessary action on the part of Borrower, General Partner and Guarantor and do not and will not:
 - (i) require any consent or approval not heretofore obtained of any Person having any interest in Borrower, General Partner or Guarantor;
 - (ii) violate any provision of, or require any consent or approval not previously obtained under, any applicable governing document applicable to Borrower, General Partner or Guarantor;
 - (iii) result in or require the creation of any lien, claim, charge or other right of others of any kind (other than under the Loan Documents) on or with respect to any property now or hereafter owned or leased by Borrower, General Partner or Guarantor;
 - (iv) violate any provision of any Law presently in effect; or
 - (v) constitute a breach or default under, or permit the acceleration of obligations owed under, any contract, any loan document (including any Subordinate Loan Document, or the Permanent Commitment), lease or other agreement or document to which Borrower, General Partner or Guarantor is a party or by which Borrower, General Partner or Guarantor, or any of their respective property, is bound.
- (b) Neither Borrower, General Partner nor Guarantor is in default in any respect under the Loan Documents or under any Law, contract, loan agreement, lease or other agreement or document to which Borrower, General Partner or Guarantor is a party or by which Borrower, General Partner or Guarantor, or any of their respective property, is bound.
- (c) No approval, license, exemption or other authorization from, or filing, registration or qualification with, any Governmental Agency is required in connection with:
 - (i) the execution and delivery by Borrower, General Partner and Guarantor of, or the performance by Borrower, General Partner and Guarantor of their respective obligations under, the Loan Documents; and
 - (ii) the creation of the liens described in the Security Documents.
- (d) Permanent Lender has not indicated that it will not honor the terms of the Permanent Commitment, or that it will not make or fund the Permanent Loan for

any reason and there is no default or unwaived failure of condition of Borrower that occurs under the Permanent Commitment.

5.3 Financial and Other Information. All financial information furnished to Lender with respect to Borrower, General Partner and Guarantor in connection with the Loan: (a) is complete and correct in all material respects, (b) accurately presents the financial condition of the applicable party and (c) has been prepared in accordance with GAAP or in accordance with such other principles or methods as are reasonably acceptable to Lender. All other documents and information furnished to Lender in connection with the Loan are true and correct in all material respects. Neither Borrower, General Partner nor Guarantor has any material liability or contingent liability not disclosed to Lender in writing and there is no material lien, claim, charge or other right of others of any kind (including liens or retained security titles of conditional vendors) on any property of any Person not disclosed in the financial statements or otherwise disclosed to Lender in writing.

5.4 No Material Adverse Occurrence. There has been no Material Adverse Occurrence since the dates of the latest financial statements furnished to Lender prior to the date of this Agreement. Since those dates, none of Borrower, General Partner or Guarantor has entered into any material transaction not disclosed in the financial statements or otherwise disclosed to Lender in writing prior to the date of this Agreement.

5.5 Tax Liability. Borrower has filed all required federal, state and local tax returns and has paid all taxes due (including interest and penalties, but subject to lawful extensions disclosed to Lender in writing) other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Borrower is maintaining adequate reserves for tax liabilities (including contested liabilities) in accordance with GAAP or in accordance with such other principles or methods as are reasonably acceptable to Lender.

5.6 Budget: Source of Funds. The Budget is based on information deemed reliable by Borrower and represents Borrower's best estimate of all costs required to acquire and complete the Project. Borrower has no knowledge, after due inquiry, that any source of funds for the Project will not be received in the amounts and at the times described in the Construction Funds Schedule.

5.7 No Litigation. There are no actions or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower, any General Partner or Guarantor, or any of their properties, or any circumstance existing which would in any manner materially adversely affect the priority or enforceability of the Loan Documents and the liens and Security Interests created pursuant thereto, or the ability of Borrower, General Partner or any Guarantor to perform any of their obligations under the Loan Documents, except as disclosed to Lender in writing prior to the execution of this Agreement. There are no condemnation proceedings or moratoria pending or threatened against the Project that would impair the construction, use, sale, value or occupancy of the Project.

5.8 Documents. Borrower has delivered to Lender true and complete copies of all Project Agreements, together with all modifications thereto. Except as otherwise disclosed to Lender in writing, all such agreements are in full force and effect and no party is in default under any such agreement. Borrower has delivered to Lender true and complete copies of (i) the form of lease to be used for each Unit, (ii) every contract and other document that grants rights to, or imposes obligations on, Borrower in connection with the Project, and has fully disclosed to Lender in

writing the material terms of all oral agreements granting or imposing any such rights or obligations.

5.9 Name and Principal Place of Business. Borrower presently uses no trade name other than its actual name. Borrower's principal place of business is 22645 Grand Street, Hayward, California 94541.

5.10 Business Loans; Regulation U. The Loan, including interest rates, fees and charges as contemplated hereby, collectively constitute business loans. The proceeds of the Loan shall be used for proper business purposes and consistently with all Requirements of Law. Borrower is not in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of the Loan shall be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

5.11 Investment Company Act; ERISA. The Borrower does not currently maintain, and never has maintained, any employee benefit plan described in Section 3(3) of ERISA that is subject to ERISA or that would be subject to ERISA if it covered more than one employee of the Borrower and if the exclusions contained in Section 4 of ERISA did not apply. The Borrower is not currently, and never has been, part of a group of companies that is required to be aggregated and treated as one employer under Section 414 of the Code.

5.12 Non-Foreign Status. Neither Borrower nor any General Partner is a "foreign person" within the meaning of Internal Revenue Code Sections 1445 and 7701 (i.e., it is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder). Borrower understands that the foregoing information may be disclosed to the Internal Revenue Service by Lender, its agents, successors and assigns, and that any false statement could be punished by fine, imprisonment or both.

5.13 Continuing Nature of Representations and Warranties. Borrower acknowledges, understands, and agrees that the representations and warranties set forth in this Agreement shall be deemed to be continuing during all times when the Loan remains outstanding and, except to the extent that Borrower discloses non-compliance to Lender in writing and Lender waives the non-compliance in writing, the representations and warranties in this Agreement shall be restated and made effective as of each date a Disbursement is requested and made in accordance herewith.

5.14 No Reliance on Lender for Advice. Borrower represents that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the Loan Documents; that it understands the risks inherent in these transactions; and that it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Loan Documents and the Subordinate Loan Documents or otherwise relied on Lender for any advice.

5.15 Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws.

- (a) The Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of the Borrower, any Subsidiary or to the knowledge of the Borrower or such Subsidiary any of their respective directors, officers or employees is a Sanctioned

Person. No Loan, use of the proceeds of any Loan or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions.

- (b) Neither the making of the Loan hereunder nor the use of the proceeds thereof will violate the USA Patriot Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Borrower and its Subsidiaries are in compliance in all material respects with the USA Patriot Act.

6. **Project Representations, Warranties and Covenants.**

As a material inducement to Issuer's issuance of the Bonds, Lender's entry into this Agreement, and Bondowner Representative's purchase of the Bonds, Borrower covenants and agrees with Lender and represents and warrants to Lender as of the date hereof and during the term of this Agreement (except as otherwise disclosed to and consented to by Lender in writing prior to the date of execution of this Agreement) that:

6.1 **Completion of Improvements.** Borrower shall commence before the Commencement Date and thereafter diligently proceed with the rehabilitation of the Project. In any event, Borrower shall complete the rehabilitation of the Improvements on or before the Completion Date. The Improvements shall be considered complete for purposes of this Agreement only when:

- (a) the Improvements are substantially completed in accordance with the Plans, as approved by Lender, are paid for in full and are free of all mechanics, labor, materialmen and other similar liens;
- (b) a certificate of substantial completion for the Improvements has been signed by Borrower, the General Contractor and the Architect and delivered to Lender, and no punchlist items remain to be completed or, if punchlist items remain to be completed, funds have been escrowed for their completion in an amount acceptable to Lender;
- (c) Borrower has delivered to Lender copies of all licenses and permits needed to occupy and operate the Project;
- (d) Lender has received acceptable evidence that all Requirements of Law and all private restrictions and covenants relating to the Improvements have been complied with or satisfied and that unconditional certificates of occupancy for the Improvements (including, without limitation, each Unit) have been issued by all appropriate Governmental Agencies;
- (e) Borrower is in possession of the entire Project;
- (f) copies of all warranties from suppliers covering materials, equipment and appliances included within the Project have been delivered to Lender;
- (g) evidence that all insurance required hereby is in full force and effect has been delivered to Lender; and

- (h) streets and offsite utilities located within or pertaining to the Project have been completed to the satisfaction of all Governmental Agencies.

The Completion Date shall be extended for a period equal to the period of any delay caused by Force Majeure, provided Borrower furnishes Lender with written notice of the Force Majeure event within ten (10) Business Days from the occurrence of the delay. In no event, however, shall the time for completion of the Improvements be extended beyond the earlier of (i) the date occurring ninety (90) days after the Completion Date for the Improvements, (ii) any date that the Investor has established for completion as a condition to making its Construction Equity Deposits, (iii) the PIS date required by the LIHTC Documents, or (iv) the date for completion of the Improvements set forth in any Subordinate Loan Document or Project Agreement.

6.2 Offsite Improvements. Borrower shall promptly commence and diligently complete all offsite improvements of the public streets, walks, sewers, utilities and like areas and facilities adjoining the Land, if any, and provide utilities and other facilities, in accordance with the requirements of all Governmental Agencies.

6.3 Conformity with Plans. Borrower represents that the Plans comply with all Laws, including but not limited to all Accessibility Laws. Borrower shall cause the Improvements to be constructed in conformity with the Plans and in such a manner so they will not encroach upon or overhang any easement, right of way or land of others. If any aspect of the Project is not in substantial conformity with the Plans or encroaches upon easements, rights of way or land of others, Lender shall have the right to stop the work and order repair or reconstruction in accordance with the Plans and to withhold further Disbursements until the Project is in substantial compliance with the Plans and/or does not so encroach. Upon written notice from Lender (or Borrower's discovery irrespective of notice) that any aspect of the Project is not in substantial conformity with the Plans or encroaches upon easements, rights of way or land of others, Borrower shall promptly commence correcting the deviation or encroachment and shall prosecute the work diligently to completion, which in no event shall be later than thirty (30) days after the notice or discovery.

6.4 Change Orders. Borrower agrees that the Plans shall not be modified except pursuant to Change Orders. All Change Orders:

- (a) shall be in writing on AIA Form 701 or other form approved by Lender, numbered in sequence, signed by Borrower, Architect, and General Contractor and any other entity required pursuant to the Construction Contract and, with regard to Material Change Orders, submitted to Lender prior to the proposed effectiveness thereof and accompanied by working drawings and a written narrative of the nature of and reason for the nature of and reason for the proposed change and shall be approved by Investor if required under Borrower's Partnership Agreement;
- (b) shall contain an estimate by Borrower of all increases and decreases in itemized Project Costs that would be caused by the change, as well as the aggregate amount of all changes in estimated Project Costs (both increases and decreases) previously made;
- (c) shall contain a certification by Borrower stating the aggregate amount, including both increases and decreases, of all changes in Project Costs reflected in Change

Orders for which Lender's approval has not been obtained or has not been required hereunder;

- (d) shall include a description of the impact of such proposed Change Order on the construction schedule;
- (e) shall be certified by Borrower to be in compliance with all applicable Laws and other requirements; and
- (f) shall be subject to Lender's prior written approval if the Change Order (i) would change the number of Units within the Project as shown on the Plans; (ii) would affect any structural component of the Project, (iii) would involve changes in the Budget which require Lender's approval under Section 4.1, or (iv) would delay the Completion of the Project beyond the Completion Date (each change requiring Lender's approval under this subparagraph (f) being referred to herein as a "**Material Change Order**").

6.5 Entry and Inspection. Upon reasonable notice to Borrower (which notice may be written or oral), Lender and its agents shall have:

- (a) the right of free access during normal business hours to the Project and all sites away from the Project where materials for the Project are stored,
- (b) the right to inspect during Borrower's normal business hours all labor performed and materials furnished for the Project; and
- (c) the right to inspect during Borrower's normal business hours, and copy, all documents pertaining to Borrower and the Project.

6.6 Project Information. From time to time during the course of the Project, within ten (10) days following Lender's written demand therefore, Borrower shall furnish Lender with reports of Project Costs, an updated Draw Request Spreadsheet, progress schedules and contractors' cost breakdowns for the Project, itemized as to trade description and item, showing the names of the general contractor(s) and/or subcontractor(s), and including any indirect costs such as real estate taxes, legal and accounting fees, insurance, architects' and engineers' fees, financing costs, interest during construction and general contractor's overhead.

6.7 Governmental Requirements. Borrower has obtained all building permits and similar permits, licenses, approvals and other authorizations of Governmental Agencies required in connection with the ownership, development and use of the Land and the Project, and all the permits, licenses and approvals remain in full force and effect. Borrower is and shall continue to be during the term of this Agreement in compliance with all Laws relating to the Project and all licenses, exemptions, approvals and other requirements of Governmental Agencies required in connection with the Project and the development of the Project, including each of the following as applicable:

- (a) zoning, land use and planning requirements, including requirements arising from, or relating to the adoption or amendment of, any applicable general plan;
- (b) subdivision and parcel map requirements;

- (c) environmental requirements;
- (d) requirements in connection with use, occupancy and building permits; and
- (e) requirements of public utilities.

6.8 Project Agreements. Borrower shall employ the General Contractor as general contractor for the Project pursuant to the Construction Contract. Borrower shall not terminate, or modify in any material respect, any Construction Contract without Lender's prior written consent, which shall not be unreasonably withheld. Borrower shall not enter into any other agreement with respect to the construction and/or development of the Project without the prior written consent of Lender. Within ten (10) days after Lender's written demand therefore, Borrower shall deliver to Lender lists of all contractors and subcontractors employed in connection with the Project. Each list shall show the name, address and telephone number of each general contractor and subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of material suppliers, if known, the approximate dollar value of labor, work and materials itemized with respect to each general contractor, subcontractor and materialman, and the unpaid portion and status of the work or whether the materials have been delivered. Lender and its agents shall have the right (but not the obligation) to directly contact the General Contractor, each general contractor, subcontractor and material supplier to verify the facts disclosed by any such list. The General Contractor shall furnish a 100% payment and performance bond from a surety acceptable to Lender naming the Lender as a dual obligee.

6.9 Project Inspector. Borrower hereby agrees to pay or reimburse Lender for the costs charged by the Project Inspector in connection with review and approval of all Plans, contracts, budgets and related matters, inspection of the Project, and approval of Draw Requests. Without limiting the foregoing, the Project Inspector may be engaged to complete pre-closing review of the Plans and Budget to determine the adequacy thereof, and/or complete monthly inspections to review status of construction, compare construction draws to construction progress, review invoices, and make recommendation for payment. Based on the Project Inspector's recommendation, the Budget may be adjusted by Lender. Notwithstanding anything in this Agreement to the contrary, Borrower understands and agrees that all inspections are for the sole purpose of protecting Lender and are made solely for Lender's benefit; that inspections may be superficial and general in nature, primarily to inform Lender of the progress of construction; and, that in any event, Borrower shall not be entitled to rely on any inspections(s) for evaluating workmanship, conformance to Plans or otherwise. Borrower agrees to make its own inspections of the construction to determine that the quality of the construction and all other requirements of the work of construction are being performed in a manner satisfactory to Borrower. Lender shall have no obligations to share with Borrower any inspection reports.

6.10 Property Management Agreements. Borrower shall at all times employ the Property Manager for the Project and will not amend, modify or terminate the Property Management Agreement without the prior written consent of Lender. The Lender shall have the right to approve any change in the Property Manager.

6.11 Access; Roads; Easement. All roads and other accesses necessary for the construction of the Improvements and full utilization thereof for their intended purposes have been completed or the necessary rights of way therefore have either been acquired or have been dedicated to public use and accepted by the applicable Governmental Agency(ies) (US) and all necessary steps have been taken to assure the complete construction and installation thereof by a date sufficient to ensure timely Completion in accordance with this Agreement. The Land physically abuts, and

has the legal right of access to, a public road and no curb cut approvals or other approvals from a Governmental Agency are required for Borrower to have the right of access from the Land to the public road. To the best of Borrower's knowledge, Borrower is in compliance with all covenants, conditions, restrictions, easements, rights of way and other rights of third parties relating to the Project.

6.12 Parking. All parking required by any Governmental Agency for the Project is located on the Land.

6.13 No Encroachments. The Improvements do not and will not encroach upon any set back line, sideyard line, or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) which exists with respect to the Land.

6.14 Lots; Plat. The Land consists of one or more separate and legal lots for real estate tax, zoning, subdivision, conveyance and all other purposes, none of which lots include any property (i) not subject to the Deed of Trust, or (ii) owned by anyone other than Borrower.

6.15 Subdivision Plat. If applicable, prior to recording any subdivision plat for the Land, Borrower shall (a) provide Lender with a final copy of the plat, which shall be subject to Lender's review and approval, (b) execute and deliver modifications to the Loan Documents to evidence the amended legal description of the Land, together with such other documents and instruments as Lender reasonably requests, (c) provide Lender with a commitment for an endorsement to Lender's Title Policy to insure the new legal description of the Land, (d) provide Lender with all reciprocal easement agreements and similar agreements that Borrower proposes to record contemporaneously with the plat, all of which shall be subject to Lender's review and approval, and (e) provide Lender with the additional documents, information and instruments as Lender shall reasonably request.

6.16 Hazardous Substances. Except as otherwise previously disclosed to Lender in writing or the Environmental Reports, Borrower has no knowledge of the presence on, under or about the Project, now or in the past, of any Hazardous Substances, or of the transportation to or from the Project of any Hazardous Substances. Borrower agrees to construct and/or rehabilitate, operate and maintain the Project strictly in compliance with all Environmental Laws. Borrower has provided Lender with true and correct copies of all Environmental Reports and will provide Lender with copies of any amendments or updates thereto and with any additional reports prepared with respect to the environmental condition of the Project. Except as specifically disclosed in the Environmental Reports, Borrower: (a) has not received any notice or otherwise learned of any Environmental Liability relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence as to Borrower arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law, or (ii) the release or threatened release of any Hazardous Substance or other substance into the environment; (b) has no knowledge of any threatened or actual liability in connection with the release or threatened release of any Hazardous Substance or other substance into the environment relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence; or (c) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a release or threatened release of any Hazardous Substances into the environment where such liability individually or in the aggregate for all such liabilities would constitute a Material Adverse Occurrence as to Borrower. Borrower has not received any notice of any violation of any Environmental Laws relating to the Project where the violation would constitute a Material Adverse Occurrence as to Borrower.

6.17 Title/Liens. On the Closing Date and at all times thereafter until Borrower's obligations hereunder are satisfied in full, Borrower will have marketable fee simple title to the Project, subject only to the Permitted Encumbrances. Borrower represents that no work has commenced on the Project that would cause mechanics liens to take priority over the Deed of Trust unless approved in writing by Lender and affirmatively covered by the Title Policy. Borrower shall maintain the lien of the Deed of Trust as a valid first priority lien on the Project and agrees that it will not suffer or permit any liens (other than the Permitted Encumbrances and Subordinate Loan Documents) or mechanics' liens to be claimed or filed or otherwise asserted against the Project and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, and will pay all special assessments which have been placed in collection and real estate taxes and assessments of every kind upon the Land, before the same become delinquent. In the event that any claim of lien is asserted against the Project or any claim is asserted against Lender by any Person furnishing labor or materials to the Project, Borrower shall immediately give notice of the same to Lender and shall, promptly and in any event within ten (10) Business Days, (a) pay and discharge the same, or (b) effect the release thereof by delivering to Lender a surety bond complying with the requirements of applicable Laws for the release of the lien or claim, (c) escrowing funds in an amount acceptable to Lender, or (d) obtain affirmative title insurance coverage insuring over the lien in form and substance acceptable to Lender. Notwithstanding the foregoing, Lender shall have the right but not the obligation, to (i) fund a portion of a Draw Request, withholding an amount that Lender deems sufficient to satisfy any lien, or (ii) accept a cash deposit or other security in lieu of the surety bond described in clause (b) of the immediately preceding sentence. If Borrower shall fail promptly to discharge claims, taxes or assessments asserted against Borrower or the Property and cause any judgment or decree to be satisfied and any lien to be released, then and in any such event Lender may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, in its sole discretion effect any settlement or compromise of the same. Any amounts expended by Lender in connection therewith, including premiums paid or security furnished in connection with the issuance of any surety bonds, shall be a Protective Advance. In settling, compromising, discharging or providing indemnity or security for any claim for lien, tax or assessment, Lender shall not be required to inquire into the validity or amount thereof. In no event shall Lender be liable to any general contractor, design professional, subcontractor, materialman or any other Person providing, furnishing or delivering services, labor, equipment or material to the Project.

6.18 Leases. Except as specifically provided below, each Lease of all or any part of the Project is subject to Lender's written approval as to form and substance prior to execution and delivery. All leases shall require the tenant to comply with all Laws and Borrower shall not lease any space to a Tenant whose activities would violate any Laws. Borrower shall obtain the written approval of Lender (and all other parties whose approval is required) of Borrower's standard form of residential Lease or rental agreement prior to its use by Borrower. Borrower shall not materially modify the lease form approved by Lender without Lender's prior written consent and the approval of all other parties whose consent is required.

- (a) Notwithstanding the foregoing, Borrower may enter into residential Leases (and amendments) in the ordinary course of business with bona fide third party residential tenants without Lender's prior written consent if Borrower uses the lease form approved by Lender and complies with all of the following:
 - (i) Within 15 days after Lender's written request therefore, Lender receives a copy of the executed Lease (accompanied by all financial information and certificates obtained by Borrower pertaining to the tenant, including

any documentation required for the Unit to qualify for LIHTC, provided Borrower's release of the information does not result in any violation of any applicable clearhousing or privacy laws, or regulations).

- (ii) The Lease meets the requirements of Investor and the Credit Agency.
 - (iii) The Lease reflects an arm's-length transaction.
 - (iv) The Lease conforms to the Pro Forma Rents.
 - (v) The Lease does not affect more than one residential Unit within the Improvements and any new Lease is for a minimum term of six months and a maximum term of 12 months, unless otherwise agreed in writing by Lender.
 - (vi) As to any LIHTC Units, the Lease meets the standards of, and the tenant qualifies as an eligible tenant pursuant to, Section 42 of the Internal Revenue Code and any Regulatory Agreement.
- (b) Lender may consider any executed Lease it receives to be unsatisfactory if the Lease fails to meet any of the requirements of this Agreement. If this happens, or if Borrower at any time fails to submit to Lender any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, Lender may require Borrower to submit all future leases for Lender's approval prior to execution.
- (c) Borrower has disclosed to Lender any and all Leases affecting the Project or any portion of or interest in it. Following Completion, upon the request of Lender, (i) Borrower shall promptly deliver to Lender copies of tenant income certificates, leasing schedules and reports, and other leasing information provided to the Investor, and (ii) if there are commercial tenants occupying any part of the Project, Borrower shall promptly obtain and deliver to Lender estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements in form and substance acceptable to Lender, executed by such non-residential tenants as Lender from time to time may require.
- (d) Lender's approval of any Lease is for the sole purpose of protecting Lender's security and preserving Lender's rights under the Loan Documents. No approval by Lender will result in a waiver of any default of Borrower, to no event will Lender's approval of any Lease be a representation of any kind by Lender with regard to the Lease, its enforceability or the financial capacity of any tenant thereunder or guarantor thereof.
- (e) Borrower shall perform all obligations required to be performed by it as landlord under any Lease affecting all or any part of the Project or any space within the Improvements.
- (f) Upon Lender's request, Borrower shall provide copies of all initial tenant files with all information and verifications required by the Credit Agency and any third party file review. In addition, Borrower shall, if requested by Lender, provide Lender copies of all annual reporting regarding compliance with LIHTC

requirements provided to the Credit Agency and copies of tenant files to the extent necessary to demonstrate compliance with the Credit Agency's LIHTC compliance rules.

6.19 Title Insurance Endorsements. Borrower shall deliver to Lender, at Borrower's sole expense and in form and content reasonably satisfactory to Lender, all endorsements and binders to the Title Policy reasonably required by Lender from time to time.

6.20 Sale or Lease of Project. Except for Permitted Transfers, Borrower shall not sell, lease or otherwise transfer any interest in the Project or the Personal Property (or any interest therein), other than (a) the lease of residential Units for a term of one-year or less, or (b) disposition of Personal Property to the extent permitted under Section 7.2 below, without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

- (a) Transfers requiring Lender's prior written consent shall include, without limitation, the following:
 - (i) involuntary transfers and transfers by operation of law;
 - (ii) liens and assignments as security for obligations, whether voluntary or involuntary; and
 - (iii) the issuance, sale, assignment, disposition, encumbering or other transfer of any direct or indirect ownership interest in Borrower, General Partner or Guarantor, whether voluntary or involuntary, by operation of law or otherwise, other than Permitted Transfers.
- (b) No sale, lease or other transfer shall relieve Borrower from primary liability for its obligations under the Loan Documents or relieve any Guarantor from any liability under any Guaranty, and Borrower shall deliver to Lender all documents reasonably required by Lender to evidence its continuing liability.
- (c) Notwithstanding anything to the contrary contained herein, the following transactions are hereby deemed to be expressly permitted hereunder and shall, for purposes of the Loan Documents, constitute the "**Permitted Transfers**":
 - (i) Issuance of limited partner interests in Borrower as contemplated in the Partnership Agreement;
 - (ii) The transfer by the initial Investor approved by Lender of its ownership interests in Borrower to any other entity which is an Affiliate of the initial Investor or which is controlled directly by the initial Investor; provided that, notwithstanding any such transfer, the initial Investor shall remain primarily obligated to make all Capital Contributions to Borrower in accordance with and subject to the Partnership Agreement;
 - (iii) The removal of any General Partner by the Investor approved by Lender, pursuant to the terms of the Partnership Agreement, and the concurrent replacement of the removed entity with an Affiliate of the Investor approved by Lender (or a designee of Investor approved by Lender); provided that the prior written consent of Lender shall have first been

obtained (which consent may be conditioned upon the satisfaction of any conditions imposed by Lender), including without limitation, a requirement that the substitute Partner provide guaranties in form and substance satisfactory to Lender; or

(iv) The Subordinate Loans.

6.21 Utilities. The Project is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Project for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are located either in the public right of way abutting the Project (which are connected so as to serve the Project without passing over other property) or in recorded easements serving the Project and described in the Title Policy.

7. **Covenants Regarding Maintenance, Operation, Preservation and Repair of Project.**

7.1 Maintenance Alteration and Repair. Borrower shall maintain the Project (and all abutting grounds, sidewalks, roads, parking and landscape areas) in good condition and repair, reasonable wear and tear excepted, shall operate the Project in a businesslike manner, shall prudently preserve and protect both its own and Lender's interests in connection with the Project, shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of any damage to the Project or of any other impairment of Lender's interests under the Loan Documents. Borrower shall not remove, demolish or materially alter any Improvement (except as contemplated in the Plans), except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in a good and competent manner, any Improvement (or other aspect or portion of the Project) that is damaged or destroyed from any cause. All construction work on the Project, and any other work on the Project shall be done in compliance with the requirements for the Credits.

7.2 Personal Property. Borrower shall not install in, or use in connection with, the Project any Personal Property which any Person other than Lender has the right to remove or repossess under any circumstances, or on which any Person other than Lender has a lien (other than Permitted Liens). Borrower shall not cause or permit the removal from the Project of any items of Personal Property (other than tools and equipment used in the development of the Project) unless: (i) no Event of Default remains uncured, and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which items shall be free of liens (other than Permitted Liens) and shall be subject to the lien of the Deed of Trust, and Borrower executes and delivers to Lender all documents required by Lender in connection with the attachment of the liens to the Personal Property. Borrower shall keep detailed records of each such removal and shall make the records available to Lender upon written request from time to time.

7.3 Taxes and Impositions. Borrower shall pay all Impositions prior to delinquency. If permitted by law, Borrower may pay any Imposition in installments (together with any accrued interest). Borrower shall maintain the Tax Escrow Account if required by Section 10.2.

(a) Right to Contest. Borrower shall not be required to pay any Imposition so long as (a) its validity is being actively contested in good faith and by appropriate proceedings and (b) Borrower has demonstrated to Lender's satisfaction that leaving the Imposition unpaid pending the outcome of the proceedings could not result in conveyance of the Project in satisfaction of the Imposition or otherwise

impair Lender's interests under the Loan Documents; provided that Lender may require Borrower to furnish Lender with a bond or other security satisfactory to Lender in an amount not less than 150% of the applicable claim.

- (b) Evidence of Payment; Tax Reporting Service. Borrower shall (a) deliver to Lender, within thirty (30) days following the due date of any Imposition, evidence of payment reasonably satisfactory to Lender and, (b) upon written notice by Lender upon an Event of Default or Borrower's failure to pay any installment of taxes from time to time, Lender may engage, at Borrower's expense, a tax reporting service for the Project.
- (c) Property Tax Exemption. If the Project is exempt from taxation, on or prior to the Closing Date and thereafter within ninety (90) days after the end of each tax year, there shall be provided to Lender letters from all Governmental Agencies having real property taxing power over or other similar jurisdiction over the Project to the effect that the Project is and will remain exempt from all real property taxation for the immediately succeeding tax year or, if different, the immediately succeeding real property taxation assessment, levy and collection cycle for the taxing authority.

7.4 Assessment Districts. Unless otherwise required by applicable Law, Borrower shall not, without Lender's prior written consent, cause or suffer to become effective, or otherwise consent to the formation of, any assessment district, or any other comparable or similar district, area or territory which includes the Project or any part of the Project which would require the Project to pay taxes higher than would otherwise be payable or require minimum tax payments or cause or otherwise consent to the levying of special taxes, assessments or payments in lieu against the Project or any part thereof, the levying of assessments by any assessment district against the Project or any part thereof, or the levying of assessments, taxes and/or other Impositions by any district, area or territory.

8. Other Covenants.

While any obligation of Borrower or Guarantor under the Loan Documents remains outstanding, the following provisions shall apply, except to the extent that Lender otherwise consents in writing:

8.1 Lists of Personal Property. Borrower shall deliver to Lender from time to time, within ten (10) days of Lender's request therefore, a list of all Personal Property then in existence.

8.2 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Security Documents, to subject to the Security Documents any property intended by the terms of any Loan Document to be covered by the Security Documents, or otherwise to carry out the purposes of the Loan Documents and the transactions contemplated thereunder.

8.3 Guarantor Net Worth and Liquidity. Borrower shall cause Guarantor to maintain Net Worth of not less than \$25,000,000.00. Borrower shall cause Guarantor to maintain Liquidity of not less than \$5,000,000.00.

8.4 Subordinate Loan Documents/Affordability Requirements. Borrower shall timely perform its obligations under the Subordinate Loan Documents. Borrower agrees that:

- (a) Lender and its counsel shall (at the cost of Borrower) be provided an opportunity to review and approve the Subordinate Loan Documents prior to the execution and delivery thereof.
- (b) The terms and conditions upon which the Subordinate Loans will be made will be pursuant to the understandings memorialized in the commitment of each Subordinate Lender (as further described below) as provided to and approved by Lender and its counsel as of the date of this Agreement.
- (c) The Subordinate Loan Documents shall be the only documents, agreements and understandings with respect to the Subordinate Loans, other than the usual and customary UCC financing statements, which Lender and its counsel shall (at the cost of Borrower) have been given an opportunity to review and approve.
- (d) For all purposes of this Agreement, all documents relating to the Subordinate Loans shall be considered to be part of the Subordinate Loan Documents.
- (e) Borrower acknowledges and agrees that each Subordinate Lender shall be required to enter into the Subordination Agreements at or prior to the time the Subordinate Loan Documents are expected to be executed and delivered.
- (f) As additional conditions to closing the Loan, Lender shall have received in form and substance satisfactory to Lender (i) fully-executed Subordinate Loan Documents from each Subordinate Lender relating to the Subordinate Loans and identifying all closing and funding conditions related thereto, and (ii) fully executed Subordination Agreements among Borrower, each Subordinate Lender and Lender, vesting in Lender (or its assignees or designees), certain rights under certain circumstances to assume Borrower's position with respect to the applicable Subordinate Loan commitment and the transactions relating to the Subordinate Loans.
- (g) If required in writing by Lender within ninety (90) days after the end of each calendar year, Borrower shall deliver to Lender its certificate signed by a Designated Representative to the effect that at all times during the then ended annual period, the Project was in full and complete compliance with the Subordinate Loan Documents and with all local, state and federal affordability requirements applicable to the Project, as well as any rent limitations imposed in connection with the credits allocated to the Project, subject in all cases to applicable cure periods. The certificate shall also contain a statement to the effect that for the immediately preceding annual period, no default or Event of Default shall have occurred under any of the Subordinate Loan Documents and that as of the end of the immediately preceding annual period and as of the date of the certificate, no conditions, circumstances, or occurrences exist that would result in, or would, with the passage of time or giving of notice (or both), reasonably be expected to result in a default.

- (h) Borrower shall not enter into any new Subordinate Loan Documents, or amend, modify, supplement, cancel or terminate any Subordinate Loan Documents without the prior written consent of Lender.

8.5 Capital Contributions. The Partnership Agreement shall obligate the Investor to make Capital Contributions in at least the amounts and at the times set forth in *Exhibit E*. Borrower and General Partner shall take all actions necessary to cause the Investor and General Partner to make the Capital Contributions described on *Exhibit E* in a timely manner. Borrower and General Partner shall take all actions necessary to satisfy any conditions necessary for the timely payments of the Capital Contributions, the proceeds of which shall be promptly deposited by Borrower in the Bank-Controlled Account, to be disbursed by Lender pursuant to this Agreement.

8.6 Single Asset Borrower. Borrower's sole business purpose shall be to own and operate the Project. Borrower (i) shall conduct business only in its own name and under any trade name for the Project, (ii) shall not engage in any business or have any assets unrelated to the Project, (iii) shall not have any Indebtedness other than as permitted by this Agreement, (iv) shall have its own separate books, records, and accounts (with no commingling of assets), (v) shall hold itself out as being an entity separate and apart from any other person or entity, (vi) shall observe limited partnership formalities independent of any other entity, and (vii) shall not change its name, identity, or organizational structure, unless Borrower shall have obtained the prior written consent of Lender to the change, and shall have taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of Security Interests under the Loan Documents.

8.7 Reserves Required by Investor. Borrower shall establish and fund those reserve accounts required to be established and maintained pursuant to and in accordance with the Partnership Agreement, including, without limitation, a rent reserve account and a service reserve account.

8.8 Reappraisal Requirements. Borrower agrees that Lender shall have the right to obtain, at Borrower's expense, an appraisal of the Project prepared by an appraiser selected by and acceptable to Lender and in conformance with governmental regulations applicable to Lender and approved by Lender at any time that: (a) an Event of Default has occurred hereunder, (b) any condemnation, damage or destruction of the Project occurs, or (c) such appraisal is required by then current banking laws or regulations, In the event that Lender shall elect to obtain such an appraisal, Lender may immediately commission an appraiser, at Borrower's cost and expense, to prepare the appraisal and Borrower shall fully cooperate with Lender and the appraiser in obtaining the necessary information to prepare the appraisal. Provided-that no Event of Default then exists, Borrower shall not be required to pay for more than one appraisal in any twelve (12) month period. In the event that any appraisal shall determine that the then outstanding principal balance of the Loan, together with the undisbursed portion of the Loan which Lender may be obligated to disburse to Borrower in accordance with the terms and conditions hereof, is greater than 80 percent of the fair market value of the Project and Borrower fails to prepay, within 30 days after written notice from Lender to Borrower, the outstanding principal balance of the Loan to the extent necessary to reduce the sum of said principal balance and such amounts Lender may be obligated to disburse to Borrower hereunder down to eighty percent (80%) of the fair market value, such event shall constitute an Event of Default. In the event such appraisal is required by reason of the damage or destruction of a portion of the Project, the fair market value shall be calculated on the Project after restoration of the Improvements, but subject only to then existing Leases which will remain in full force and effect following such restoration.

8.9 Bond Documents. Borrower shall timely perform its obligations under the Bond Documents and shall not cause or permit the occurrence of any default under such documents to which it is a party.

8.10 Tax Certificate. Borrower shall timely comply with all of its obligations under the Tax Certificate (which Tax Certificate is hereby incorporated herein as fully as if set forth at length herein).

8.11 Other Tax Covenants.

- (a) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act (as defined in the Indenture) or impair the exclusion from gross income for federal income tax purposes of the interest on the Bonds. The Borrower intends to utilize the portion of the Project financed with proceeds of the Bonds as multifamily rental housing during the Qualified Project Period (as defined in the Regulatory Agreement).
- (b) Not in excess of two percent (2%) of the proceeds of the Loan will be used to pay costs of issuance of the Bonds.
- (c) The acquisition, rehabilitation and operation of the Project in the manner presently contemplated and as described herein and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be constructed and operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.
- (d) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds for the Loan.
- (e) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project.
- (f) All of the proceeds from the Loan plus any income from the investment of the proceeds of the Loan will be used to pay or reimburse the Borrower for Project Costs (as defined in the Regulatory Agreement), and at least 95% of the proceeds of the Loan will be used to pay or reimburse the Borrower for Qualified Project Costs (as defined in the Regulatory Agreement) and less than 25% of such amount will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Loan are expended so as to cause the Bonds to constitute a “qualified residential rental bond” within the meaning of Section 142(d) of the Code.

- (g) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Bonds to be included in the gross income of the owners thereof for purposes of federal income taxation, except for any owner that is a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code (as defined in the Indenture).
- (h) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Bondowner Representative or otherwise, any action with respect to the proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

8.12 Additional Borrower Equity. Commencing with the calendar quarter ending June 30, 2016, and continuing during each calendar quarter thereafter until the Maturity Date, within fifteen (15) days following the end of each such quarter, Borrower shall deposit an amount equal to lesser of (x) \$_____ or (y) the Net Operating Income from the Property for the immediately preceding calendar quarter, into the Bank-Controlled Account. All such Net Operating Income shall be used to pay for Project Costs in accordance with the Budget.

9. **Covenants Regarding Insurance and Condemnation.**

9.1 Insurance, Casualty and Condemnation. In addition to any provisions regarding or requiring property, casualty or other insurance and the application of any proceeds thereof which may be found in the Deed of Trust or any other Loan Document:

- (a) Policies Required. While any obligation of Borrower or any Guarantor under any Loan Document remains outstanding, Borrower shall maintain at Borrower’s sole expense, with insurers reasonably approved by Lender, the policies of insurance, in form and substance reasonably satisfactory to Lender, identified in ***Exhibit L*** attached hereto and all other insurance reasonably required by Lender from time to time for commercial loans made for residential rental properties. All insurance shall meet all of the requirements set forth in ***Exhibit L*** and shall provide that it may not be cancelled or materially modified without thirty (30) days’ prior written notice to Lender. No insurance shall include deductible amounts to which Lender has not previously consented in writing. Certificates of insurance for the required policies (and/or original policies, if required by Lender) shall be delivered to Lender annually and otherwise from time to time within ten (10) days after demand therefore. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Borrower shall deliver to Lender evidence of renewal or replacement of the policy reasonably satisfactory to Lender.
- (b) Claims and Proceedings. Borrower shall give Lender immediate notice of any casualty to any portion of the Project, and of the institution or, if Borrower obtains actual knowledge of any threatened institution, the threatened institution, of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Project (collectively, “***Condemnation***”), and shall

provide Lender with copies of all documents in Borrower's possession which pertain to any casualty or Condemnation. Borrower shall take all action reasonably required by Lender in connection therewith to protect the interests of Borrower and Lender, and Lender shall be entitled (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its choice.

- (c) Delivery of Proceeds to Lender. In the event that, notwithstanding the "lender's loss payable endorsement" requirement set forth in **Exhibit L**, the proceeds of any casualty insurance policy described herein are paid to Borrower, Borrower shall deliver such proceeds to Lender immediately upon receipt for deposit in the Bank-Controlled Account.
- (d) Application of Casualty Insurance Proceeds. Any proceeds collected (the "**Proceeds**") under any casualty insurance policy described in this Agreement shall be disbursed to Borrower as provided below, but only upon fulfillment of each of the following conditions (the "**Restoration Conditions**") within sixty (60) days following the occurrence of the damage for which the Proceeds are collected:
 - (i) Borrower shall have demonstrated to Lender's satisfaction that the Proceeds (together with amounts deposited by Borrower pursuant to subparagraph (ii)) will be adequate to repair the Improvements to the condition which existed immediately prior to such damage or destruction and to restore the fair market value of the Project, within a time period reasonably determined by Lender and at least six months prior to the Maturity Date, to at least the value the Project had immediately prior to sustaining the damage. Such demonstration shall include delivery to Lender of (A) plans and specifications reasonably satisfactory to Lender and (B) a construction contract in form and content, and with a contractor, reasonably satisfactory to Lender.
 - (ii) To the extent that the Proceeds are insufficient to accomplish the restoration required above, Borrower shall have delivered funds to Lender (the "**Shortfall Funds**") in the amount of the shortfall, which funds shall be assigned to Lender as security for Borrower's obligations hereunder and held and disbursed in the same manner as the Proceeds.
 - (iii) Borrower shall have executed such documents as Lender requires to evidence and secure Borrower's obligation to use all amounts disbursed for the diligent restoration of the Project, including a contract with a Project Inspector selected by Lender and engaged by the Lender at Borrower's expense, to inspect the progress of the repair.
 - (iv) No Event of Default, or event that with notice or the passage of time or both would constitute an Event of Default, shall then exist.

Any Proceeds and Shortfall Funds to be disbursed to Borrower shall be held by Lender in the Bank-Controlled Account and disbursed in accordance with the disbursement procedures and related provisions set forth in this Agreement (if any) and all other disbursement provisions then customarily required by Lender. Any amounts remaining undisbursed following Completion

shall be returned to Borrower up to the amount of any Shortfall Funds deposited by Borrower, and any other amounts remaining shall either be paid to Borrower or applied by Lender against any obligations to Lender that are secured by a lien on the Project, as Lender elects in its absolute discretion.

In the event that Borrower fails to fulfill the Restoration Conditions within sixty (60) days following the date on which the damage occurs, the Proceeds shall be applied by Lender against any obligations to Lender that are secured by a lien on the Project, and the selection of which obligations to apply the Proceeds against shall be made by Lender in its absolute discretion.

- (e) In the event the Improvements cannot be fully rebuilt or restored then the applicable provisions of the Loan Documents relating to reappraisals, remargining and prepaying (in whole or in part) the Loan shall be employed to determine to what extent, if any, the Loan is to be remargined and prepaid, whether as a result of decreased value, decreased Project revenues, reduced cash flows or otherwise but giving credit for business interruption insurance, if any. Notwithstanding the foregoing, any proceeds not used to pay costs of rebuilding and restoring the Project shall be used to prepay, in whole or in part, the Loan and to pay costs associated therewith, including without limitation, any prepayment premium, breakfunding, yield maintenance, termination or breakage fees or other similar amounts.
- (f) Restoration. Nothing in this Section 9.1 shall be construed to excuse Borrower from repairing and restoring all damage to the Project in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient for such purpose.
- (g) Treatment of Compensation. Borrower hereby assigns to Lender, as security for all obligations to Lender secured by a lien on the Project, all amounts payable to Borrower in connection with any Condemnation, and any proceeds of any related settlement (collectively, "*Compensation*"). Borrower shall deliver all Compensation to Lender immediately upon receipt. In the event that Lender chooses, in its absolute discretion, to waive the Event of Default described in Section 15.1(g), any Compensation received by Lender shall be (i) disbursed to Borrower for repairs and reconstruction in accordance with the rights, procedures and other provisions set forth in this Agreement for the application of casualty insurance proceeds (including, without limitation, requirements with respect to Borrower's deposit of Shortfall Funds) and/or (ii) applied by Lender against obligations to Lender secured by a lien on the Project in such order as Lender shall determine in its absolute discretion.
- (h) CCP Section 1265.225(a). Borrower hereby unconditionally, and irrevocably waives all rights of a property owner under Section 1265.225(a) of the California Code of Civil Procedure or any successor statute providing for the allocation of condemnation proceeds between a property owner and a lien holder.
- (i) California Civil Code Section 2955.5(a). Borrower is aware that California Civil Code Section 2955.5(a) provides as follows: No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real

property in an amount exceeding the replacement value of the improvements on the property.

10. **Covenants Regarding Required Accounts; Security Agreement.**

During the term of the Loan, Borrower shall maintain the following accounts (“**Required Accounts**”):

10.1 **Tenant Security Deposit Account.** Borrower shall maintain an account at Lender (the “**Security Deposit Account**”) into which Borrower shall deposit all Security Deposits required for residential tenants of the Project under the terms and conditions of their Leases with Borrower. Withdrawals from the Security Deposit Account shall be solely for the purpose of returning Security Deposits to residential tenants in accordance with the terms and conditions of their Leases.

10.2 **Tax Escrow Account.** Upon the occurrence of an Event of Default and any time thereafter, Lender may require Borrower to deposit with Lender in the Tax Escrow Account, an amount each month equal to 1/12th of the aggregate amount which Lender estimates will be required to pay the annual amount required to pay Impositions. The purpose of these provisions is to provide sufficient funds on hand for Lender to pay the Imposition charges. If the funds so deposited are insufficient to pay the Impositions when the same shall become due and payable, Borrower shall provide such additional funds as may be necessary to pay the Impositions in full. If Borrower is not required to make payments into the Tax Escrow Account, Borrower shall provide evidence to Lender that the Impositions have been paid within ten (10) days after making such payment.

10.3 **Insurance Escrow Account.** Upon the occurrence of an Event of Default and at any time thereafter, Lender may require Borrower to deposit with Lender in the Insurance Escrow Account, which account shall be maintained at Lender, an amount each month equal to 1/12th of the amount which Lender estimates will be required to make the aggregate annual payments of the premiums for the policies of insurance required by this Agreement (“**Insurance Premiums**”). The purpose of these provisions is to provide sufficient funds on hand for Lender to pay all the Insurance Premiums 30 days before the date on which they become past due. Borrower shall provide any additional funds as are necessary to make up any deficiencies in amounts necessary to pay the Insurance Premiums when due. If Borrower is not required to make payments into the Tax Escrow Account, Borrower shall provide evidence to Lender at least 30 days before the term of the existing insurance expires, that the Insurance Premiums have been paid.

10.4 **Operating Account.** Borrower agrees to open and maintain the Operating Account for the Project at the Lender.

10.5 **Bank-Controlled Account.** Borrower shall establish the Bank-Controlled Account at the Lender.

10.6 **Intentionally Omitted.**

10.7 **Construction Disbursement Account.** Borrower shall maintain the Construction Disbursement Account for deposit of the proceeds of the Loan and other Funding Sources as required to fund a pending Draw Request.

10.8 Security Agreement for Required Accounts. Borrower shall open and maintain at Lender the Required Accounts under the terms and conditions set forth above together with any successor accounts and all subaccounts of any of the foregoing as well as such other accounts as Lender, may reasonably request and which are commercially customary for similar projects. As additional security for Borrower's obligations under the Loan Documents, Borrower hereby grants to Lender a first lien security interest in each of the Required Accounts, whether now existing or hereafter established, and all funds from time to time on deposit therein. Borrower shall maintain each Required Account free and clear of any claim, lien or other encumbrance other than the security interest granted to Lender hereunder. Upon the occurrence of an Event of Default, Borrower grants to Lender a full right of set-off with respect to all or any portion of the funds on deposit in the Required Accounts and any and all interest accrued thereon, if any, which right may be exercised at any time following the occurrence of an Event of Default. Lender may, to the maximum extent permissible by law, apply any or all of the funds in the Required Accounts, including accrued interest, if any, toward the unpaid balance of the Loan and/or to any other amounts which may be due and owing under the Loan Documents. The parties acknowledge and agree that each of the Required Accounts is a "deposit account" within the meaning of 9-104 of the UCC. The parties further acknowledge and agree that California constitutes the "Lender's jurisdiction" with respect to the perfection, the effect of perfection or non-perfection, and the priority of a security interest in a deposit account maintained at a Lender under 9-304(b)(1) of the UCC. Lender shall at all times have "control" of the Required Accounts and all assets now or hereafter credited thereto within the meaning of Section 9-106 of the UCC or Section 9-104(a) of the UCC for purposes of maintaining its first and prior perfected security interest therein.

11. **Financial Covenants.**

11.1 Intentionally Omitted.

11.2 Limitation on Distributions. Prior to the Conversion Date, no Distribution of Net Operating Income shall be made to Borrower, Guarantor, or any Partner or Affiliate of Borrower or Guarantor for any purpose other than Permitted Developer Fee Payments in strict accordance with the Budget and Developer Fee Subordination Agreement.

11.3 Limitations on Additional Indebtedness and Other Transactions. Borrower and General Partner shall not, without the prior written consent of Lender, in Lender's sole discretion, incur any Indebtedness of any kind, secured or unsecured, other than the Loan and the Subordinate Loans, provided that in the instance of the Subordinate Loans, the Subordination Agreement shall remain in full force and effect and of record in the real property records of the County at all times while any portion of the Loan or the amounts payable under or in respect of the Loan Documents remain unpaid.

12. **Reporting Requirements.**

12.1 Financial and Covenant Compliance Reporting Requirements.

- (a) Borrower shall furnish and, as appropriate, cause Guarantor to furnish, to Lender the following in form reasonably acceptable to Lender:

REPORTING PARTY	REQUIRED STATEMENT	TO BE RECEIVED BY
1. Borrower	After Completion, annual audited financial statement prepared in accordance with GAAP (CPA Compiled, at a minimum), and certified by each reporting party, which shall include balance sheets and income statements	Within 120 days of the end of each Fiscal Year during the term of the Loan
2. Borrower	After Completion, the monthly (i) rent roll, (ii) Operating Statement, and (iii) leasing status report for the Project (to be prepared and certified by reporting party)	Within 30 days of the end of each calendar month between Completion Date and the Maturity Date
3. Borrower	After Completion, proposed Operating Budget for upcoming Fiscal Year	At least 30 days after the commencement of each Fiscal Year
4. Borrower	After Completion, annual federal tax returns, including K-1's (to be prepared and certified by reporting party)	Within 30 days of filing, and in any event no later than November 30 of each year during the term of the Loan
5. Borrower	Compliance Certificate	Within 30 days of the end of each calendar quarter during the term of the Loan
6. Guarantor	Annual audited financial statements (CPA reviewed, at a minimum) and certified by each reporting party	Within 180 days after the end of each Fiscal Year during the term of the Loan
7. Guarantor	Quarterly Guarantor Compliance Certificate (with bank statements if funds are not held with Lender, and any other documentation satisfactory to Lender to support Net Worth and Liquidity requirements)	Within 30 days after each calendar quarter during the term of the Loan
8. Guarantor	Annual federal tax returns (to be prepared and certified by the reporting party)	Within 30 days of the filing, and in any event no later than November 30 of each year during the term of the Loan
9. Borrower	Evidence that Impositions have been paid in accordance with Section 10.2	Annually at least 10 days before payment is due
10. Borrower	Evidence that the Insurance Requirements set forth on Exhibit L	Annually at least 10 days before any insurance renewal is required

REPORTING PARTY	REQUIRED STATEMENT	TO BE RECEIVED BY
	have been satisfied (e.g. insurance certificates) that Insurance Premiums have been paid in accordance with Section 10.3	or as otherwise required by Lender
11. Guarantor	Update to schedule or real estate holdings	Semi-annually within thirty days after each 6/30 and 12/31 during the term of the Loan

- (b) Electronic Submissions. Subject to Lender's consent as to format and delivery method, Borrower may submit records to Lender in accordance with this Section in an electronic format (pdf, cd, etc.).

12.2 Notice of Certain Matters. Borrower shall give notice to Lender, within ten (10) days after Borrower obtains actual knowledge thereof, of each of the following:

- (a) any litigation or claim affecting or relating to the Project and involving an amount in excess of \$25,000; and any litigation or claim that might subject Borrower, General Partner or Guarantor to liability in excess of \$50,000, whether covered by insurance or not;
- (b) any dispute between Borrower and any Governmental Agency relating to the Project, the adverse determination of which might materially affect the Project, or any threat of any eminent domain action against the Property or any part thereof;
- (c) any trade name hereafter used by Borrower and any change in Borrower's principal place of business;
- (d) any circumstance that renders the Budget materially inaccurate with respect to any estimated Project Cost;
- (e) any aspect of the Project that is not in substantial conformity with the Plans;
- (f) any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default;
- (g) any default by Borrower or any other party under any Construction Document, or the receipt by Borrower of any notice of default under any Construction Document;
- (h) the creation or imposition of any mechanics' lien or other lien against the Project;
- (i) any default by Borrower under any Bond Documents, or the receipt by Borrower of any notice of default under any Bond Documents;
- (j) any default by Borrower under any Subordinate Loan Documents, or the receipt by Borrower of any notice of default under any Subordinate Loan Documents;

- (k) any default by Borrower under the Permanent Commitment;
- (l) the presence of any Hazardous Substances on, under or about the Project other than Hazardous Substances permitted pursuant to the Environmental Indemnity Agreement; any enforcement, clean-up, removal or other action or requirement of any Governmental Agency relating to any Hazardous Substances; and the existence of any occurrence or condition on any property in the vicinity of the Project that could cause any portion of the Project to be subject to any restrictions relating to Hazardous Substances;
- (m) any Material Adverse Occurrence;
- (n) receipt of any notice or any other information of any action by the Credit Agency or any Limited Partner relating to a reduction in the amount of Credits available to the Project, noncompliance with the Tax Credit LURA or any adverse change in the facts and circumstances necessary for the Limited Partners to make the Capital Contributions;
- (o) any changes to Borrower's Organizational Documents, General Partner's Organizational Documents or Guarantor's Organizational Documents; and
- (p) any changes in the terms or amount of the Subordinate Loans.

12.3 Additional Reports and Information. Borrower shall maintain complete books of account and other records reflecting the operations of the Project in accordance with generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Lender. Borrower shall deliver to Lender, in form and substance reasonably satisfactory to Lender and within ten (10) days of Lender's written request therefore from time to time, (a) copies of all financial statements and reports that Borrower sends to its partners, (b) copies of all reports which are available for public inspection or which Borrower is required to file with any Governmental Agency, and (c) all other information relating to Borrower, General Partner, Guarantor, the Project or the Loan reasonably required by Lender from time to time. Borrower and General Partner shall also deliver to Lender copies of all applications, approvals and other communications and correspondence relating to the Credits.

12.4 Keeping Guarantor Informed. Borrower shall keep Guarantor informed of Borrower's financial condition and business operations, the condition and all uses of the Project, including all changes in condition or use, and any and all other circumstances that might affect Borrower's ability to pay or perform its obligations under the Loan Documents, In addition, Borrower must deliver to Guarantor all of the financial information relating to Borrower or the Project described in Section 12.1 within the times given in that Section.

12.5 Partnership Agreement. Except as required in connection with a Permitted Transfer, neither Borrower nor General Partner shall amend, modify, supplement or restate their governing documents without the prior written consent of Lender, nor shall either Borrower or General Partner cancel or terminate their respective governing documents without the prior written consent of Lender.

12.6 Prohibited Transactions. Borrower shall not, without the prior written consent of Lender, engage directly or indirectly in any off balance sheet, hedge or derivative transactions, including without limitations, interest rate swaps and interest rate caps except with Lender and its Affiliates

and subsidiaries. In addition to the foregoing, Borrower shall not cause or allow the proceeds of the Loan to be invested except in a federally insured account without the prior written consent of Lender.

12.7 Bond Documents, Subordinate Loan Documents or Permanent Commitment. Borrower shall not enter into any new Bond Documents or Subordinate Loan Documents or amend, modify, supplement, cancel or terminate any Bond Documents, Subordinate Loan Documents or the Permanent Commitment without the prior written consent of Lender.

12.8 Tax Certificate. Borrower shall timely comply with all of its obligations under the Tax Certificate (which Tax Certificate is hereby incorporated herein as fully as if set forth at length herein).

12.9 Cooperation in Enforcement of Regulatory Agreement. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Issuer and the Administrator (as defined in the Regulatory Agreement) in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Issuer, to cooperate fully and promptly with the Issuer in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(d) of the Regulatory Agreement.

The Issuer shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the Issuer from any claim or liability for such breach pursuant to Section 9 of the Regulatory Agreement.

12.10 Indemnification of the Issuer and Bondowner Representative.

- (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer and the Bondowner Representative, and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

- (i) the Loan Documents or the Regulatory Agreement, or the execution or amendment of any thereof or in connection with transactions contemplated thereby, including the issuance and sale of the Bonds;
- (ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or rehabilitation of, the Project or any part thereof;
- (iii) any lien or charge upon payments by the Borrower to the Issuer and/or Bondowner Representative hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer in respect of any portion of the Project;
- (iv) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;
- (v) the defeasance and/or redemption, in whole or in part, of the Bonds;
- (vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate, offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds to which the Borrower is a party, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;
- (vii) any declaration of taxability of interest on the Bonds, or allegations (or regulatory inquiry) that interest on the Bonds is taxable, for federal tax purposes; and
- (viii) the Bondowner Representative's acceptance or administration of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Bondowner Representative or any its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, or (B) in the case of the foregoing indemnification of the Issuer or any of its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party; and provided that this Section is not intended to give rise to a right of the Issuer or the Bondowner Representative to claim payment of the principal and accrued interest with respect to the Loan as a result of an indemnified third party claim. In the event that any action or proceeding is

brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party (other than Issuer) may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

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

- (b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses hereof shall survive the final payment or defeasance of the Bonds and in the case of the Bondowner Representative any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement.

12.11 Tax Exempt Status of Bonds.

- (a) It is the intention of the Issuer and the Borrower that interest on the Bonds shall be and remain excludable from gross income of the ___ of the Bonds for federal income taxation purposes, (except for interest on any Bond for any period during which such Bond is owned by and person who is and substantial user of the Project or a related person within the meaning of Section 147(a) of the Code) and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Bondowners and the Issuer.
- (b) The Borrower covenants and agrees that it will not use or permit the use of any of the funds provided by the Issuer or the Bondowner Representative hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, that would, or take or omit to take any other action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and applicable Regulations.
- (c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section it is necessary to restrict or to limit the yield on the investment of any moneys held under the Indenture or otherwise by the Bondowner Representative as the Lender, the Borrower shall determine the limitations and so instruct the Bondowner Representative in writing and cause the Bondowner Representative to comply with those limitations under the Indenture.

- (d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Bond Counsel or of counsel to the Issuer, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code as it applies to the Bonds and the Loan.
- (e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the rehabilitation, operation or management of the Project, to the extent required by applicable State or federal law.
- (f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions, of this Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.
- (g) The Borrower will use due diligence to complete the acquisition and rehabilitation of the Project and reasonably expects to expend the full authorized principal amount of the Loan within twenty-four months of the date of this Loan Agreement.
- (h) The Borrower will calculate or cause to be calculated, at the times required by the Code, any rebate due to the federal government in respect of the Bonds, and will make timely payment of any rebate amount due to the federal government.

12.12 Useful Life. The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected remaining economic life of the facilities being financed with the proceeds of the Bonds.

12.13 Federal Guarantee Prohibition. The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

12.14 Prohibited Facilities. The Borrower represents and warrants that no portion of the proceeds of the Loan will be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Loan will be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

13. LIHTC and Other Credit Covenants.

13.1 Compliance with Credit Requirements. Borrower and General Partner shall take all actions required to preserve its entitlement to and eligibility for the Credits. Borrower and General Partner shall give Lender prompt notice of any notice from a state or federal authority

that adversely affects Borrower's or General Partner's entitlement to the Credits or the amount of the Credits. Borrower and General Partner shall also provide Lender with prompt notice of any alleged setoff or defense to any Limited Partner's obligations to make the additional Capital Contributions required by the Partnership Agreement. Borrower and General Partner will comply with all state and federal laws, regulations and rulings regarding the Credits including, but not limited, to all regulations and rulings issued by the Internal Revenue Service and the Credit Agency. Without limiting the foregoing, Borrower shall timely file all certifications and reports required by the Credit Agency to the extent feasible, Borrower shall provide copies of the certificates and reports and the LIHTC documents in an electronic format reasonably required by Lender, in connection with the Credits and shall deliver copies of those certifications and reports to Lender concurrently with filing the same. Borrower shall timely submit applications for the 8609 for the LIHTC. If Borrower does not submit the application for the 8609 or any other documents required to obtain the Credits on a timely basis, Borrower authorizes Lender to submit the required documentation on Borrower's behalf. Lender may contact the Borrower's accountant or Lender may engage a different accountant to complete the necessary submissions at Borrower's expense. Nothing herein shall obligate Lender to prepare or submit any required documentation to obtain the Credits.

13.2 Compliance and Cooperation in Enforcement of Tax Credit LURA and Regulatory Agreement. Borrower hereby covenants and agrees as follows:

- (a) to comply with all applicable provisions of Section 42 of the Internal Revenue Code, the Tax Credit LURA and the Regulatory Agreement;
- (b) to advise Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Tax Credit LURA and the Regulatory Agreement;
- (c) upon written direction by Lender, to cooperate fully and promptly in enforcing the terms and provisions of the Tax Credit LURA and Regulatory Agreement;
- (d) to file in accordance with the time limits established by the Tax Credit LURA and Regulatory Agreement, as applicable, all reports and certificates required thereunder, and provide Lender a recorded copy thereof;
- (e) to promptly provide Lender copies of all Form 8609s received by Borrower; and
- (f) to immediately provide Lender copies of all Form 8823s that Borrower receives from the Credit Agency or other evidence of non-compliance with LIHTC requirements that Borrower receives from a Governmental Agency, together with the Borrower's plan for correcting the non-compliance and when corrected, evidence of the correction.

Lender shall not incur any liability in the event of any breach or violation of the Tax Credit LURA or the Regulatory Agreement, and Borrower agrees to indemnify Lender from any claim or liability for breach or purported breach thereof.

14. Intentionally Omitted.

15. Defaults and Remedies.

15.1 Events of Default. The occurrence of any of the following, whatever the reason therefore, shall constitute an Event of Default:

- (a) Borrower fails to make any payment of principal and/or interest under the Note within ten (10) days when the payment first becomes due and payable; or
- (b) Borrower fails to perform any other obligation for the payment of money (other than as described in any other subparagraph of this Section 15.1) under any Loan Document executed by Borrower within five (5) Business Days after Lender gives Borrower written notice that the obligation was not performed; or
- (c) Borrower fails to pay insurance premiums or charges or fails to pay real estate taxes or similar charges, as and when required by this Agreement; or
- (d) Borrower or General Partner fails to timely perform any other obligation (other than as described in any other subparagraph of this Section 15.1) under this Agreement or any of the Loan Documents executed by Borrower or General Partner, and, to the extent the failure is capable of being cured, the failure is not cured within thirty (30) days after the earlier of (i) the date Lender gives Borrower written notice that the obligation was not performed, or (ii) the date Borrower or General Partner first obtains knowledge of the failure to perform; provided that, if cure cannot reasonably be effected within the 30-day period, the failure shall not be an Event of Default so long as Borrower or any General Partner promptly (in any event, within ten (10) days after receipt of the notice) commences cure, and thereafter diligently (in any event within sixty (60) days after receipt of the notice) prosecutes such cure to completion; provided further, however, that if a specific cure period is separately provided for the breach or failure under this Agreement or any of the other Loan Documents, then that cure period shall apply, and no additional cure period shall be provided under this Section 15.1(d); or
- (e) Any Guarantor fails to timely perform any obligation under any Guaranty executed by such Guarantor in connection with the Loan; or
- (f) Any representation or warranty in this Agreement or any other Loan Document proves to have been incorrect in any material respect when made or at the time of any disbursement of the proceeds of the Loan; or
- (g) All or any material portion of the Project is condemned, seized or appropriated by a Governmental Agency; or
- (h) The Project is materially damaged or destroyed by fire or other casualty, unless Borrower fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within sixty (60) days of such damage or destruction or receipt of insurance proceeds, whichever is later, and thereafter diligently restores the Project in accordance with this Agreement; or
- (i) Work on the Project ceases for thirty (30) consecutive days for any reason other than Force Majeure, provided that the same do not, in the aggregate and in Lender's reasonable judgment, threaten to delay the Completion of the Project beyond the required Completion Date set forth in this Agreement; or

- (j) Any contractor for the Project whose contract exceeds \$100,000 in value, including the General Contractor, materially breaches such contract, and the breach continues beyond any applicable notice and cure period, and Borrower fails to enter into an agreement with a substitute contractor acceptable to Lender within the Budget allocation for such contract, within thirty (30) days after such event; or
- (k) Borrower, any General Partner, any Guarantor is dissolved, liquidated or terminated, or all or substantially all of the assets of Borrower, General Partner or any Guarantor are sold or otherwise transferred without Lender's prior written consent, or, except for a Permitted Transfer, there is any transfer of the ownership interests of Borrower, General Partner or any Guarantor; or
- (l) Borrower, any Partner or any Guarantor is the subject of an order for relief by a bankruptcy court, files a voluntary petition for bankruptcy or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower, any Partner or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed for Borrower, any Partner or any Guarantor without the application or consent of Borrower, the applicable Partner or the applicable Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) days; or Borrower, any Partner, or any Guarantor, institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Borrower, any Partner or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) days; or Borrower, any Partner, or any Guarantor shall suffer a material adverse change in financial condition; or any judgment, writ, warrant of attachment or execution, or similar process, is issued or levied against any property of Borrower, any Partner, or any Guarantor and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or
- (m) Any Guaranty is repudiated, revoked or terminated without Lender's prior written consent; or any Guarantor claims that its Guaranty is ineffective or unenforceable, in whole or in part and for any reason, with respect to amounts then outstanding or amounts that might in the future be outstanding; or
- (n) Borrower is enjoined or otherwise prohibited by any Governmental Agency from constructing and/or occupying the Improvements and the injunction or prohibition continues unstayed for thirty (30) days or more for any reason; or
- (o) Any Bond Document is amended, modified or terminated without Lender's prior written consent or a default occurs under any Bond Document, subject to any applicable cure period set forth therein; or
- (p) Borrower or any other party modifies, supplements or amends, without Lender's prior written consent (in its sole and absolute discretion), or rescinds or

terminates, any of the Subordinate Loan Documents, the Permanent Commitment or the Tax Credit LURA; or

- (q) Borrower defaults in any other obligation to Lender other than in connection with the Loan, subject to any applicable cure period(s); or
- (r) Any Capital Contribution shown on *Exhibit E* is not made within ten (10) days of the date the Capital Contribution is scheduled to be made as shown on *Exhibit E*; or
- (s) Any Guarantor (if a natural person) dies, unless, within ninety (90) days after such Guarantor's death, the estate of the deceased Guarantor or another substitute guarantor approved by Lender shall have assumed all of Guarantor's obligations under Guarantor's Guaranty pursuant to a written assumption agreement duly authorized, executed and delivered by the assuming guarantor to Lender and otherwise in form and substance acceptable to Lender; or
- (t) Any default or event of default occurs and is continuing beyond applicable cure periods provided therein under any Subordination Agreement, any Subordinate Loan Document, any Project Agreement or any other Loan Document; or
- (u) Any default or event of default occurs and is continuing beyond applicable cure periods provided therein under the Permanent Commitment; or
- (v) Any failure (i) to timely provide a report or information required pursuant to Section 12.1 hereof, (ii) to provide any other annual or written statement required pursuant to the terms of this Agreement within ten (10) Business Days of request from Lender or (iii) provide a report or a written statement; or
- (w) The making of a prohibited distribution as described in this Agreement; or
- (x) Any default occurs under the Tax Credit LURA or Regulatory Agreement which is not cured within any applicable time period provided therein, or Borrower fails to remain in compliance with the requirements for the LIHTC; or
- (y) If applicable, the occurrence of a default by Borrower or a termination event with respect to Borrower under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Lender in connection with the Loan; or
- (z) Other than a Permitted Transfer, the withdrawal, removal or substitution of the General Partner and Borrower's failure to provide a substitute or replacement acceptable to Lender within thirty (30) days after the occurrence of any such withdrawal, removal or substitution; or
- (aa) There occurs any sale, transfer, conveyance, mortgage, pledge, encumbrance or other disposition of the Project or any sale, transfer, pledge, assignment or change in control with respect to Borrower or General Partner, or any of them, not constituting a Permitted Transfer; or

- (bb) The occurrence of any Material Adverse Occurrence in the business or financial condition of Borrower or any event that materially increases Lender's risk or materially impairs the Collateral; or
- (cc) There is a loss or material reduction in the Credits projected under the Partnership Agreement that could result in a removal of the General Partner or a repurchase of the Investor's interest under the Partnership Agreement.

If an Event of Default occurs pursuant to this Agreement for which Lender is required to give notice, Lender shall give Borrower and the Investor simultaneous written notice of the Event of Default. Lender further agrees that any cure of any default made or tendered by the Investor within the time for cure required herein shall be deemed to be a cure tendered by Borrower and shall be accepted or rejected by Lender on the same basis as if made or tendered by Borrower on its own behalf.

15.2 Rights and Remedies. Upon the occurrence of an Event of Default, Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

- (a) Make one or more Advances of the proceeds of the Loan without liability to make any subsequent Advance;
- (b) Suspend and/or terminate the obligation of Lender to make Advances without notice to Borrower;
- (c) Declare the entire unpaid principal balance of the Note to be immediately due and payable, together with all accrued and unpaid interest thereon, without notice to or demand on Borrower;
- (d) Exercise, any or all remedies specified herein and in the other Loan Documents, including (without limiting the generality of the foregoing) the right to foreclose the Deed of Trust, and/or any other remedies which it may have at law, in equity or under statute;
- (e) Cure the Event of Default on behalf of Borrower, and, in doing so, enter upon the Project, and expend such sums as it may deem desirable, including attorneys' fees, all of which shall be deemed to be Advances hereunder, even though such Advances may cause the outstanding principal balance of the Loan to exceed the aggregate face amount of the Note, and all of which Advances shall bear interest at the Default Rate provided herein and shall be due and payable by Borrower on demand; and/or
- (f) Lender may declare an Event of Default under any agreement to which Lender and Borrower are parties, whether or not the agreement concerns the transactions contemplated by this Agreement, and may effectuate any remedies provided for in the agreement.

The occurrence of any event described in Section 15.1(1) shall automatically, without notice or other action on Lender's part, cause all Obligations to be immediately due and payable in full.

In addition to the other remedies set forth herein and in the other Loan Documents, Borrower hereby irrevocably authorizes Lender, at any time while an Event of Default continues,

to set off any sum due to or incurred by Lender against all accounts, deposits and credits (including, without limitation, agency, custody, safekeeping, securities, investment, brokerage and revocable trust accounts and any of the Borrower's other property in Lender's possession) of Borrower with, and any and all claims of Borrower against, Lender or Lender's affiliates. Such right shall exist whether or not Lender shall have made any demand hereunder or under any other Loan Document, whether or not said sums, or any part thereof, or deposits and credits held for the account of Borrower is or are matured or unmatured, and regardless of the existence or adequacy of any Collateral, guaranty or any other security, right or remedy available to Lender. Lender agrees that, as promptly as is reasonably possible after the exercise of any setoff right, it shall notify Borrower of its exercise of such setoff right; provided, however, that the failure of Lender to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on Lender with respect to all rights of banker's lien, setoff and counterclaim available pursuant to law.

15.3 Completion of Project by Lender. In addition, if an Event of Default occurs prior to the completion of the Improvements, then Lender may (but shall not be obligated to), in addition to, or in concert with, the other remedies referred to above, take over and complete such construction work in accordance with the Plans, with such changes therein as Lender may, in its discretion, deem appropriate, all at the risk, cost and expense of Borrower. Lender may assume or reject any contracts entered into by Borrower in connection with the Project, may enter into additional or different contracts for work, services, labor and materials required, in the judgment of Lender, to complete the Project, may pay, compromise and settle all claims in connection with the construction work with respect to the Improvements. All sums, including attorneys' fees, and charges or fees for supervision and inspection of the construction work with respect to the Improvements and for any other necessary or desirable purpose in the discretion of Lender expended by Lender in completing or attempting to complete the construction work with respect to the Improvements (whether aggregating more, or less, than the aggregate face amount of the Note), shall be deemed additional Advances made by Lender to Borrower hereunder, and Borrower shall be liable to Lender, on demand, for the payment of such sums, together with interest on such sums from the date of their expenditure at the rates provided herein. Lender may, in its discretion, at any time abandon work on the Project, after having commenced such work, and may recommence such work at any time, it being understood that nothing in this Section shall impose any obligation on Lender either to complete or not to complete the construction of the Improvements. For the purpose, of carrying out the provisions of this Section, Borrower irrevocably appoints Lender its attorney-in-fact, with full power of substitution, to execute and deliver all such documents, to pay and receive such funds, and to take such action as may be necessary, in the judgment of Lender, to complete the Project. This power of attorney is coupled with an interest and is irrevocable. Lender, however, shall have no obligation to undertake any of the foregoing, and, if Lender does undertake any of the same, it shall have no liability for the adequacy, sufficiency or completion thereof.

15.4 Cumulative Remedies; No Waiver. Lender's rights and remedies under the Loan Documents are cumulative and in addition to all rights and remedies provided by Law from time to time. The exercise by Lender of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice Lender in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Loan Document shall be construed as a waiver of any subsequent breach of the same provision. Lender's consent to or approval of any act by Borrower

requiring further consent or approval shall not be deemed to waive or render unnecessary Lender's consent to or approval of any subsequent act. Lender's acceptance of the late performance of any obligation shall not constitute a waiver by Lender of the right to require prompt performance of all further obligations; Lender's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of Lender's right to proceed with the exercise of its remedies for any unfulfilled obligations; and Lender's acceptance of any partial performance shall not constitute a waiver by Lender of any rights relating to the unfulfilled portion of the applicable obligation.

16. **Miscellaneous.**

16.1 **Nonliability of Lender and U.S. Bank.** Borrower acknowledges and agrees that:

- (a) the relationship between Borrower and Lender is and shall remain solely that of Borrower and Lender, and Lender neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with the Project, including matters relating to: (i) the Plans, (ii) architects, contractors, engineers, subcontractors and material suppliers, or the workmanship of or materials used by any of them, or (iii) the progress of the Project and its conformity with the Plans; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender in connection with such matters is solely for the protection of Lender and that neither Borrower nor any third party is entitled to rely on it;
- (b) notwithstanding any other provision of any Loan Document: (i) Neither U.S. Bank, nor Lender is a partner, joint venturer, alter-ego, manager, controlling Person or other business associate or participant of any kind of Borrower and neither Lender nor U.S. Bank intends to ever assume any such status; and (ii) neither Lender nor U.S. Bank shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower;
- (c) Neither Lender nor U.S. Bank shall be directly or indirectly liable or responsible for any loss or injury of any kind to any Person or property resulting from any construction on, or occupancy or use of, the Project (except to the extent proximately caused by Lender's or U.S. Bank's gross negligence or willful misconduct, as applicable), whether arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's Lenders, employees, independent contractors, licensees or invitees; or (iii) any accident on the Project or any fire or other casualty or hazard thereon; and
- (d) By accepting or approving anything required to be performed or given to Lender, or U.S. Bank under the Loan Documents, including any certificate, financial statement, survey, appraisal or insurance policy, neither Lender nor U.S. Bank shall be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender to anyone.

16.2 **Indemnity.** Without limiting the generality of Section 12.10 hereof, Borrower shall defend (by counsel satisfactory to Lender), indemnify and save and hold harmless Lender and

U.S. Bank and their respective directors, officers, agents and employees from and against all claims, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to (i) the issuance, sale or resale of the Bonds and the making of the Loan, except for violation of banking laws or regulations by Lender; (ii) any claim, demand or cause of action that any Person has or asserts against Borrower, General Partner, Guarantor or any Limited Partner; (iii) any act or omission of Borrower, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Project; or (iv) the ownership, occupancy or use of the Project. Borrower's obligations under this Section shall not be construed to include any obligation of Borrower set forth in the Environmental Indemnity Agreement. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Lender or U.S. Bank with respect to any loss, liability, cost or expense which is determined by a final decision of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender or any employee, contractor or agent of Lender. Borrower's obligations under this Section shall survive the cancellation of the Note and the release and reconveyance of the Security Documents.

16.3 Reimbursement of Lender. Borrower shall reimburse Lender and U.S. Bank immediately upon written demand for all costs reasonably incurred by Lender or U.S. Bank, as applicable) (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of Lender or U.S. Bank) in connection with the negotiation, preparation, execution, delivery, administration, modification, performance and enforcement of the Loan Documents (other than the Environmental Indemnity Agreement, the obligations under which are separate from those under the other Loan Documents) and all related matters, including the following: (a) Lender's, or U.S. Bank's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Loan Document other than (i) Lender's or U.S. Bank's defense of any action in which Borrower is awarded a judgment against Lender or U.S. Bank and (ii) Lender's or U.S. Bank's prosecution of any action against Borrower in which Lender or U.S. Bank fails to obtain a judgment against Borrower; and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Lender or U.S. Bank is indemnified under the Loan Documents; provided, that attorneys' fees payable hereunder shall be determined on the basis of rates then generally applicable to the attorneys (and all paralegals, accountants and other staff employed by such attorneys) employed by Lender or U.S. Bank, which may be higher than the rates such attorneys (and all paralegals, accountants and other staff employed by such attorneys) charge Lender or U.S. Bank in certain matters. Such reimbursement obligations shall bear interest following written demand at the Default Rate, and shall be secured by the Security Documents. Such reimbursement obligations shall survive the cancellation of the Note and the release and reconveyance of the Security Documents.

16.4 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of Lender to Borrower, or any other claim by Borrower against Lender, in connection with the Loan or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents, or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

16.5 Notices. Any notice required or permitted to be given by Borrower or Lender under this Agreement or any other Loan Document shall be in writing and will be deemed given (a) upon personal delivery or upon confirmed transmission by telecopier or similar facsimile transmission device, (b) on the first Business Day after receipted delivery to a courier service which guarantees

next-business-day delivery, or (c) on the third Business Day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Lender at:

U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Attention: Loan Administration Manager
Facsimile No.: (858) 334-0798

If to Borrower at:

EB, L.P.
22645 Grand Street
Hayward, California 94541
Attention: President

with a copy to:

Gubb & Barshay LLP
505 14th Street, Suite 1050
Oakland, California 94612
Attention: Natalie Gubb, Esq.

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that non-receipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

16.6 Survival of Representations and Warranties. All representations and warranties of Borrower, General Partner and Guarantor in the Loan Documents shall survive the making of the Loan and have been or will be relied on by Lender notwithstanding any investigation made by Lender.

16.7 Signs. Lender may place signs on the Project during the term of the Loan stating that financing is being provided by Lender and any other participant in the Loan.

16.8 No Third Parties Benefited. This Agreement is made for the purpose of setting forth rights and obligations of Borrower and Lender, and no other Person shall have any rights hereunder or by reason hereof.

16.9 Binding Effect; Assignment of Obligations. This Agreement shall bind, and shall inure to the benefit of, Borrower and Lender and their respective successors and assigns. Borrower shall not assign any of its rights or obligations under any Loan Document without the prior written consent of Lender, which consent may be withheld in Lender's absolute discretion. Any such assignment without such consent shall, at Lender's option, be void.

16.10 Counterparts. Any Loan Document, other than the Note, may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

16.11 Prior Agreements; Amendments; Consents. This Agreement (together with the other Loan Documents) is the only agreement between Lender and Borrower with respect to the Loan, and all prior negotiations, understandings and agreements between Lender and Borrower with respect to the Loan are superseded by this Agreement and the other Loan Documents. No modification of any of the Loan Documents (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. If Borrower requests an amendment of any Loan Documents, including but not limited to, an amendment required to change the General Partner or any Guarantor, Lender may require Borrower to pay Lender a reasonable fee to cover Lender's administrative and legal costs in connection with evaluating the proposed amendment and preparing the necessary documentation if it is approved.

16.12 Governing Law. All of the Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

16.13 Severability of Provisions. No provision in any of the Loan Documents that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Loan Documents are hereby declared to be severable.

16.14 Headings. Article and section headings are included in the Loan Documents for convenience of reference only and shall not be used in construing the Loan Documents.

16.15 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided however that, (a) with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed; and (b) the provisions of Section 2, 3 and 4 of the Regulatory Agreement shall prevail over any conflicting provisions of any other Loan Document.

16.16 Time of the Essence. Time is of the essence in all of the Loan Documents.

16.17 Transfers and Participations. Subject to Section 2.05 of the Indenture, Lender may transfer, and/or grant participations in, without notice to or the consent of Borrower or any other Person, the Loan, the Loan Documents or the Bonds at any time, in whole or in part. Lender may, without notice to or the consent of, Borrower or any other Person, furnish any transferee or participant or any prospective transferee or participant with all documents and information relating to Borrower, any Partner, any Guarantor, the Loan, the Bonds and/or the Loan Documents or any of them that Lender deems advisable in connection therewith. Borrower's indemnity obligations under the Loan Documents shall also apply with respect to any actual or prospective transferee and/or participant and the directors, officers, agents and employees of any such transferee and/or participant. Borrower, its Partners and the Guarantor or any of its or their respective Affiliates or subsidiaries shall not be given an opportunity to be a transferee, assignee, purchaser or participate under any circumstances without the prior written consent of Lender, which may be withheld in its sole and absolute discretion. In the event of any such transfer, assignment, sale or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they

agree among themselves. In connection with any such transfer, assignment, sale or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each transferee, assignee, purchaser, or participant, and upon written request by the Lender, Borrower shall enter into such amendments or modifications to the Loan Documents as may be reasonably required by Lender or U.S. Bank in order to evidence any such transfer, assignment, sale or participation, as the case may be. Borrower shall not have any right to consent to any transfer and/or grant of participations in the Loan or the Loan Documents. There are no restrictions on the type of assignee/participant to whom Lender may transfer its interest. Lender and/or U.S. Bank may provide information to prospective transferees in advance of a transfer without Borrower's consent.

16.18 Environmental Indemnity Agreement. In consideration of Lender's entry into this Agreement, Borrower and Guarantor shall deliver to Lender the Environmental Indemnity Agreement. Notwithstanding any other provision of any or Loan Document, Borrower's and Guarantor's obligations under the Environmental Indemnity Agreement shall not be secured by the Deed of Trust or any other real property now or hereafter assigned to Lender as security for any Loan Document.

16.19 Guaranties Unsecured. The Security Documents shall secure Borrower's obligations under the Loan Documents. Notwithstanding the fact that the Loan Documents may now or hereafter include one or more Guaranties and/or other documents creating obligations of Persons other than Borrower, and notwithstanding the fact that any of the Security Documents may now or hereafter contain general language to the effect that it secures the "Loan Documents," none of the Security Documents shall secure any Guaranty, or any other obligation of any Person other than Borrower, unless such document specifically describes such Guaranty or other obligation as being secured thereby.

16.20 Rights to Share Information. Lender shall have the right to discuss the affairs of Borrower with any Partner, any Guarantor and/or other third parties and to discuss the course of construction, lease-up, operation and management of the Project, the financial condition of Borrower, any Guarantor and the Project, and to disclose any information received by Lender regarding Borrower, any Guarantor or the Project or any Partner of Borrower with any other Partner of Borrower, any Guarantor and/or other third parties, singularly or together, as Lender may choose in its sole and absolute discretion. The Borrower specifically agrees that Lender may obtain information about the Project and the Borrower directly from the Investor, including but not limited to information about the status of Capital Contributions, Credits, Project Costs, and Project Expenses. In addition, Lender may provide information regarding the Project and the Borrower directly to the Investor.

16.21 Pledge to Federal Reserve. Anything in this Agreement or the Loan Documents to the contrary notwithstanding, without notice to or consent of any party or the need to comply with any of the formal or procedural requirements of this Agreement or the Loan Documents, the Lender, U.S. Bank and/or any eligible transferee, assignee, purchaser or participant may (to the fullest extent permitted under applicable law) at any time and from time to time pledge and assign any or all of its right, title and interest in, to and under all or any of the Loan and/or the Loan Documents to a Federal Reserve Bank.

16.22 Waiver of Right to Designate Application of Payment. Borrower hereby waives any and all rights it may have under California Civil Code Section 2822 to marshal assets or to designate any amount received or collected by the Lender from Borrower, any Guarantor or any other party in repayment of the Loan against any particular portion of the Loan. If, for any reason, the

foregoing waiver is found to be invalid or unenforceable, Borrower hereby irrevocably elects to designate all amounts received by the Lender from any source as payment toward the portion of the Obligations of Borrower evidenced by the Note, and only after such amount has been paid in full, against the balance of the Loan.

16.23 Waiver of Right to Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. IF FOR ANY REASON THIS WAIVER SHALL BE DEEMED TO BE UNENFORCEABLE, THEN ALL SUCH CLAIMS, DEMANDS AND ACTIONS SHALL BE RESOLVED BY REFERENCE TO THE JUDICIAL REFERENCE AGREEMENT EXECUTED CONCURRENTLY HEREWITH.

16.24 Rights in Deposit and Securities Accounts. Borrower grants to Lender a security interest in each of Borrower's deposit accounts and securities accounts now or hereafter maintained with Lender or any affiliate of Lender, including without limitation all accounts held jointly with someone else, excluding however all (a) IRA and Keogh accounts, and (b) all trust accounts for which the grant of a security interest would be prohibited by law. Borrower hereby authorizes Lender, as applicable, to charge any such account for the amount of any Obligation on its due date, but any failure by Lender, as applicable, to so charge any such account shall in no way affect the obligation of Borrower to make any such payment. The rights granted under this Section are in addition to all other rights and remedies that Lender or its Affiliates may have, including any statutory or common law rights of setoff.

16.25 USA PATRIOT Act Notice. Lender and U.S. Bank (each for itself and not on behalf of any other party) hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender, and U.S. Bank to identify Borrower in accordance with the USA Patriot Act.

16.26 Compliance With Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. Borrower shall (a) ensure, and cause each Affiliate to ensure, that no person who owns a controlling interest in or otherwise controls Borrower or any Affiliate is or shall be listed on the "Specially Designated Nationals and Blocked Person List" or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury, or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Affiliate to comply, with all applicable Bank Secrecy Act, USA Patriot Act, Anti-Corruption Laws and applicable Sanctions or any other Anti-Terrorism Law and regulations, as amended. Without limiting the foregoing, Borrower agrees that it will not: (i) permit a Prohibited Person to own an equity interest in or Control of

Borrower; (ii) lease space to any tenant who is known to Borrower to be a Prohibited Person or who is known to Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person; (iii) lease space to any tenant who is known to Borrower to be engaged in transactions or dealings with a Prohibited Person or a Person owned or Controlled by a Prohibited Person; or (iv) engage in transactions or have dealings with a Prohibited Person or a Person known by Borrower, after reasonable inquiry, to be owned or Controlled by a Prohibited Person. Upon Lender's written request, from time to time during the term of the Loan, Borrower shall certify in writing to the Lender that the representations, warranties and obligations made herein remain true and correct and have not been breached. Borrower shall notify the Lender immediately in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Borrower shall comply with all Requirements of Law and directives of Governmental Agencies and, at the Lender's written request, provide to the Lender copies of all notices, reports and other communications exchanged with, or received from, Governmental Agencies relating to such an event. Borrower shall also reimburse the Lender, Lender or U.S. Bank for any expense incurred by the Lender in evaluating the effect of such an event on the Project and the Lender's interest in the Project and in complying with all Requirements of Law applicable to Borrower, any Affiliate of Borrower, or the Lender as the result of the existence of such an event and for any penalties or fines imposed upon Borrower or the Lender as a result thereof. Borrower agrees to execute and deliver to the Lender, from time to time, such further documents and certifications as may be reasonably requested, necessary to Borrower to implement, enforce, investigate, and undertake the warranties, representations, covenants and promises made herein. In connection therewith, Borrower agrees to provide to Lender the names, tax identification numbers, addresses, and jurisdiction of organization for entities referred to herein, including all equity owners of Borrower (which shall include all holders of an equity interest, each grantor/settler of a trust if the trust is a revocable trust or if the grantor/settler has retained powers, and each trustee and beneficiary of a trust with respect thereto), and, within a reasonable time, any modifications or changes therein or thereto.

16.27 Tax Shelter Disclosure. None of Borrower, Guarantor or any Affiliate or Subsidiary of any of the foregoing intends to treat the Loan or the transactions contemplated by this Agreement and the other Loan Documents as being a "reportable transaction" (within the meaning of Regulation Section 1.6011-4). If Borrower, or any other party determines to take any action inconsistent with such intention, Borrower shall promptly notify Lender thereof in writing. If Borrower so notifies Lender, Borrower acknowledges that Lender may treat the Loan as part of a transaction that is subject to Regulation Section 301.6112-1, and Lender will maintain the lists and other records, including the identity of the applicable party to the Loan as required by such Regulation.

16.28 Designated Representative(s). Borrower hereby represents that the person or persons signing this Agreement on behalf of Borrower are hereby authorized to act as Borrower's authorized representatives for purposes of dealing with Lender on behalf of Borrower in respect of any and all matters in connection with this Agreement, the other Loan Documents and the Loan. In addition, the Borrower may designate by appropriate action in written form acceptable to Lender, additional individuals who are authorized to act on behalf of Borrower (together with the person(s) signing this Agreement, the "***Designated Representatives***"). Each Designated Representative, acting alone, shall have the power to give and receive all notices, monies, approvals and other documents and instruments, and to take any other action on behalf of Borrower. All actions by any Designated Representative shall be final and binding on Borrower. Lender may rely on the authority given to the Designated Representatives until actual receipt by

Lender of a duly authorized partnership resolution substituting a different person or persons as the Designated Representatives.

16.29 Adjustment of Interest Rate Upon Loss of Tax Exclusion. The interest rates applicable under the Note and with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the owners of the Bonds will be excludable from gross income under Section 103 of the Code and applicable State law, except for the Bonds when owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code (as defined in the Indenture). In the event that (i) Lender receives a written opinion from a nationally recognized bond counsel to the effect that, in such counsel’s opinion, interest on the Bonds will not be excluded from gross income of such owners for federal income tax purposes, other than as a result of the Bonds being held by a “substantial user” or a “related party” to such “substantial user” as used in Section 147(a) of the Code; or (ii) any owner receives notice from the Internal Revenue Service or other government agency that interest payable on the Bonds is not excludable from gross income of such owner for federal income tax purposes, or that the Internal Revenue Service is challenging the tax-exempt status of the interest on the Bonds, then the interest rate on the Note, the Bonds and on all obligations under this Agreement shall be increased to a rate equal to the Prime Rate in effect from time to time plus 2.00%. In addition, the owner shall be paid, promptly upon demand, an amount equal to the difference between the amount of interest payable on the Note from the date on which such loss of tax exemption on the Bonds shall be applicable to the date on which the interest rate on the Note was increased and the amount of interest that would have been payable on the Note during such period had the Note borne interest during such period at such higher rate. If, following any increase in interest rates pursuant to this Section, a final determination is made, to the satisfaction of such owner, that interest paid on the Bonds was, at all times prior to the determination, and will continue to be, excludable from the owner’s gross income under Section 103 of the Code and applicable state law, that owner shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this Section.

16.30 Ineligible Guarantor. The U.S. Bank Ineligible Guarantor Exclusionary Terms and Conditions dated as of May 15, 2013, are hereby incorporated into this Agreement in their entirety. Borrower hereby acknowledges receipt thereof.

16.31 Document Imaging, Electronic Transactions and the UETA. Without notice to or consent of Borrower, Lender may create electronic images of this Agreement and the other Loan Documents and destroy paper originals of any such imaged documents. Provided that such images are maintained by or on behalf of Lender as part of Lender’s normal business processes, Borrower agrees that such images have the same legal force and effect as the paper originals and are enforceable against Borrower. Furthermore, Borrower agrees that Lender may convert this Agreement and any other Loan Documents into a “transferrable record” as such term is defined under, and to the extent permitted by, the Uniform Electronic Transactions Act (the “*UETA*”), with the image of such instrument in Lender’s possession constituting an “authoritative copy” under the UETA.

16.32 Waiver of Special Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER ANY ISSUER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, THE TRANSACTIONS CONTEMPLATED THEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

16.33 Acknowledgment. Borrower hereby acknowledges that Investor is an affiliate of Lender. Borrower hereby represents, warrants and agrees with Lender as follows (and acknowledges that Lender is relying upon these representations, warranties and agreements in entering into this Agreement and making the Loans): (a) Borrower agrees that Lender has no liability to Borrower for any actions or omissions of Investor; (b) Borrower hereby represents and warrants that General Partner has read and understood the Loan Documents and the Partnership Agreement, has obtained such legal and financial reviews of such Loan Documents and partnership documents as General Partner has deemed necessary or appropriate and agrees to the terms of the Loan Documents, the Partnership Agreement and all other partnership documents, and the applicable remedies thereunder; and (c) Borrower hereby freely and knowingly forever waives any and all rights to raise the fact that Lender and Investor are affiliates as a defense in any action by Lender to enforce its remedies under the Loan Documents or in equity or at law.

16.34 Assignment to Lender. Borrower acknowledges that, concurrently herewith, and in accordance with the allonge to the Note, Issuer has assigned all of its right, title and interest in, to, and under this Agreement, the Note and the other Loan Documents (other than the Unassigned Rights as defined in the Indenture) to Lender.

16.35 Use of Proceeds. The Borrower will not request, with respect to the Loan, and the Borrower shall not use, and the Borrower shall ensure that its Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of the Loan (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions.

16.36 Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from revenues and other moneys and assets received by the Lender on behalf of the Issuer pursuant to this Agreement. Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof, nor the faith and credit or the taxing power of the Issuer is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement, any of the other Loan Documents, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement.

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

the case of the Issuer, from the revenues other than with respect to any deficiency caused by the gross negligence or willful misconduct of the Issuer.

[Remainder of page left intentionally blank Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Construction Loan Agreement to be duly executed as of the date first written above.

BORROWER:

EB, L.P.,

a California limited partnership

By: EB LLC, a California limited liability company, its sole general partner

By: Eden Investments, Inc., a California nonprofit public benefit corporation, its sole member/manager

By: _____

Name: Linda Mandolini

Title: President

BONDOWNER REPRESENTATIVE:

U.S. BANK NATIONAL ASSOCIATION,

a national banking association, as Lender,

By: _____

Name:

Title:

ISSUER:

COUNTY OF CONTRA COSTA,

a political subdivision and body corporate and politic, organized and existing under the laws of the State of California

By: _____

John Kopchik

Director, Department of Conservation and Development

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF PINOLE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

EXHIBIT B
BUDGET

EXHIBIT C-1

BORROWER'S LETTER OF DRAW REQUEST

[DATE]

U.S. Bank National Association
4747 Executive Drive, 3rd Floor
San Diego, California 92121
Project Name: Camphora Apartments
Borrower: EB, L.P.
Draw #: _____
_____, Loan Administrator

Dear _____:

Reference is hereby made to that certain Construction Loan Agreement dated _____, 2016 (the "**Loan Agreement**"), executed between the Borrower, Issuer and U.S. Bank National Association (the "**Lender**"). Any defined terms not otherwise described herein shall have the same definitions as in the Loan Agreement.

Pursuant to the Loan Agreement, the Borrower hereby requests a Disbursement in the amount listed as the Requested Amount on the attached Draw Request Certification (the "**Requested Amount**"). The Borrower acknowledges that the approval of this Draw Request by the Lender is subject to all of the terms and conditions precedent for a Disbursement, including without limitation, inspection of the Project by Project Inspector, verification of matters set forth in the Draw Request Certification, and the available Funding Sources.

Included with this letter is the following:

- Draw Request Certification
- An updated Budget
- Payee listing with copies of invoices and vendor names for which payment is being requested.

The Borrower requests that the Requested Amount be funded in the following Construction Disbursement Account:

Name of Bank: _____
ABA Routing #: _____
Account #: _____
Account Name: _____
Reference: _____
Notify: _____

The Borrower has executed this Draw Request Letter as of _____.

BORROWER:

EB, L.P.,

a California limited partnership

By: EB LLC, a California limited
liability company, its sole general partner

By: Eden Investments, Inc., a California
nonprofit public benefit corporation,
its sole member/manager

By: _____

Name: Linda Mandolini

Title: President

EXHIBIT C-2

DRAW REQUEST CERTIFICATION

Disbursement No. _____

The undersigned, as Designated Representative of Borrower, hereby requests a Disbursement in the amount, and on the date, set forth below, pursuant to the Construction Loan Agreement dated _____, 2016 (the "*Loan Agreement*"), between **EB, L.P.**, a California limited partnership (the "*Borrower*"), Issuer and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (the "*Lender*"). Capitalized terms used and not otherwise defined herein has the meanings set forth for them in the Loan Agreement.

REQUESTED AMOUNT: _____

REQUESTED DATE: _____

Borrower hereby represents and warrants to Lender that:

- a) The requested Disbursement shall be applied to pay Project Costs in accordance with the itemized Payment Request attached hereto.
- b) The Funding Source(s) to be used for this disbursement are as follows:

Source: _____

Amount: \$ _____

- c) At the date hereof, no suit or proceeding at law or in equity, and no investigation or proceeding of any governmental body, has been instituted, or, to the knowledge of Borrower, is threatened, which in either case, if adversely determined, could materially and adversely affect the Project, or the financial or other condition of, or the business operations of, Borrower.
- d) At the date hereof, no Event of Default under the Loan Agreement or under any of the other Loan Documents has occurred and is continuing, and no event has occurred which, upon the service of notice and/or the lapse of time, would constitute an Event of Default thereunder.
- e) The representations and warranties set forth in the Loan Agreement are hereby reaffirmed and restated, and Borrower represents and warrants to Lender that the same are true, correct and complete on the date hereof as if made on and as of the date hereof.
- f) No material adverse change has occurred in the financial condition or in the assets or liabilities of Borrower or Guarantor(s) from those set forth in the latest financial statements for each furnished to Lender.
- g) The progress of construction of the Project is such that it can be completed on or before the Completion Date specified in the Loan Agreement for the cost originally represented to Lender, except for the following _____.
- h) The Loan, as of the date hereof, is "In Balance" as required by the Loan Agreement, and the undisbursed proceeds of the Funding Sources, including the advance requested herein, are

adequate and sufficient to pay for all labor, materials, equipment, work, services and supplies necessary for the completion of the Project, including the installation of all fixtures and equipment required for the operation of the Project, except for the following Project cost increases: _____

- i) The labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Project in full accordance with the Plans, which have not been amended except as expressly permitted by the Loan Agreement.
- j) There have been no changes in the costs of the Project from those set forth on the Sworn Construction Cost Statement, as amended by any amendment thereto heretofore delivered by Borrower to Lender (and approved by Lender, if such approval is required by the Loan Agreement).
- k) All bills for labor, materials, equipment, work, services and supplies furnished in connection with the Project, which could give rise to a mechanic's lien if unpaid, have either been paid or will be paid out of the requested advance.
- l) All claims for mechanics' or materialmen's liens which shall have arisen or could arise for labor, materials, equipment, work, services or supplies furnished in connection with the Project through the last day of the period covered by the requested advance have been effectively waived in writing, or will be effectively waived in writing when payment is made, and such written waivers shall be delivered to Lender or its agent.
- m) All funds advanced under the Loan Agreement to date have been utilized as specified in the Draw Requests pursuant to which the same were advanced, exclusively to pay costs incurred for or in connection with acquiring, constructing and developing the Land and the Project, and Borrower represents that no part of the Funding Sources have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Project, as that term is defined in the Loan Agreement. Borrower further represents that all funds covered by this Draw Request are for payment for labor, materials, equipment, work, services or supplies furnished solely in connection with the Project.
- n) All changes in the Plans, if any, have been made in accordance with the Loan Agreement.
- o) No notice or any other information has been received relating to a reduction in the amount of Credits available to the Project and there has been no adverse change in the facts and circumstances necessary for the General Partner to receive the Capital Contributions.
- p) Notwithstanding the foregoing, the following constitute exceptions or modifications to the foregoing representations and warranties set forth above subject to the Lender's approval of the exceptions in Lender's sole discretion (if none are listed, then there are none):
_____.

Borrower authorizes and requests Lender to charge the total amount of this Draw Request against the Funding Sources and to advance from the proceeds of the Loan or other Funding Source, as applicable, the funds hereby requested, and to make or authorize disbursement of funds to or for the account of the persons or firms and Borrower in amounts up to, but not exceeding, the amounts listed herein, subject to the requirements of and in accordance with the procedures provided in the Loan Agreement and/or any separate disbursing agreement relating to the Loan. The advance made pursuant to this Draw Request is acknowledged to be an accommodation to Borrower and is not a waiver by Lender

of any defaults or events of default under the Loan Documents or any other claims of Lender against Borrower, Guarantor(s) and/or the General Contractor.

The advances and disbursements on the attached sheets are hereby approved and authorized.

SIGNATURE PAGE
FOR
DRAW REQUEST CERTIFICATION

BORROWER:

Date: _____

EB, L.P.,
a California limited partnership

By: EB LLC, a California limited
liability company, its sole general partner

By: Eden Investments, Inc., a California
nonprofit public benefit corporation,
its sole member/manager

By: _____
Name: Linda Mandolini
Title: President

EXHIBIT D
SWORN CONSTRUCTION COST STATEMENT

EXHIBIT D

**EAST BLUFF APARTMENTS
SWORN CONSTRUCTION COST STATEMENT
TOTAL PROJECT COSTS**

SWORN CONSTRUCTION COST STATEMENT

DATE: _____, 2016

LENDER: U.S. BANK NATIONAL ASSOCIATION

BORROWER: EB, L.P.

GENERAL CONTRACTOR: _____

PROJECT ARCHITECT: _____

PROJECT: EAST BLUFF APARTMENTS

The undersigned Borrower, being first duly sworn, as the borrower and the owner of the Project, deposes and says, in connection with the development, construction and completion of the Project that this Sworn Construction Cost Statement includes a true, correct and complete listing of all costs for material, supplies, equipment, labor, and other work and services of any kind necessary to achieve Completion (as that term is defined in the Construction Loan Agreement (the "*Loan Agreement*") between Borrower and Lender) of the Project; that listed herein are the names of all persons, parties and entities having contracts or subcontracts relating to development, construction or completion of the Project, or which are otherwise entitled to receive payment for materials, supplies, equipment, labor, or other work or services of any kind with respect to the Project, and the amounts previously paid, now due, or to become due to each of said parties; and that there is no amount previously paid, now due or to become due to any party not listed herein, or in excess of the amount listed herein, for material, supplies, equipment, labor, or other work or services of any kind relating to the Project.

The undersigned further deposes and says, also in connection with the development, construction and completion of the Project, that any change or increase in the total cost of the Project as shown herein, or in the amount payable to any party listed herein, will be immediately communicated in writing to Lender, and will be subject to approval by Lender, if such approval is required by the Loan Agreement; that all parties named herein will guarantee their materials provided or work performed in connection with the Project to be free from defects for at least one (1) year after Completion of the Project; that the purpose of the foregoing is to induce Lender to advance the proceeds of a loan of up to \$29,476,000.00, secured by a mortgage, deed of trust, security deed or trust indenture upon the Project; and that, upon payment of the specific unpaid items listed herein, Borrower will indemnify and save harmless Lender as to any other claim and as to any lien for any material, supplies, equipment, labor, and other work or services of any kind relating to the Project.

GENERAL CONTRACTOR

The undersigned, being first duly sworn, as General Contractor for the Project, deposes and says that it has entered into an _____ ("**Contract**"), dated ____, 2016, by and between EB, L.P. ("**Borrower**") and itself for the construction of the Project; that this Sworn Construction Cost Statement includes a true, correct and complete listing of all costs for material, supplies, equipment, labor, and other work and services of any kind required to construct and complete the Project in accordance with the terms and conditions of the Contract; that listed herein are the names of all persons, parties and entities having contracts or subcontracts relating to the work covered by the Contract, or which are otherwise entitled to receive payment for providing any material, supplies, equipment, labor, or other work or services of any kind in connection with the Project pursuant to the Contract, and the amounts previously paid, now due, or to become due to each of said parties; that there are no other contracts or subcontracts relating to the work covered by the Contract outstanding; and that there is no amount previously paid, now due, or to become due to any party not listed herein, or in excess of the amount listed herein, for material, supplies, equipment, labor, or other work or services of any kind provided or to be provided in connection with the construction and completion of the Project pursuant to the Contract.

The undersigned further deposes and says that any change or increase in the total cost to construct the Project under the Contract, or in the amount payable to any party listed herein in connection with the Contract, will be immediately communicated by it in writing to borrower and to U.S. Bank National Association ("**Lender**"); that all parties named herein in connection with the Contract will guarantee that their materials provided or work performed in connection with the Project will be free from defects for at least one (1) year after Completion (as that term is defined in the Construction Loan Agreement between Borrower and Lender) of the Project; that the purpose of the foregoing is to induce Lender to advance to Borrower the proceeds of an up to \$29,476,000.00 loan, secured by a mortgage/deed of trust upon the Project; and that, upon payment of the specific unpaid items listed herein, the undersigned General Contractor will waive all claims of priority to said mortgage/deed of trust and will indemnify and save harmless Lender as to any other claim or priority of lien for any material, supplies, equipment, labor, or other work or services of any kind furnished to construct the Project in accordance with the terms and conditions of the Contract.

EXHIBIT E

SCHEDULE OF REQUIRED CAPITAL CONTRIBUTIONS

Capital Installments

Limited Partner Capital Equity Installments	Amount of Capital Contribution	Capital Contribution Due Date	Construction Equity Deposit
First Capital Contribution	\$_____00	Closing Date	Yes

This Capital Contribution shall be used, to the extent not required for other Partnership purposes as specified by the Investor, to pay \$157,061.00 of Developer Fee and the remainder will be used to pay construction costs.

Second Capital Contribution	\$_____00	[COMPLETION] Payable upon satisfaction of the Second Contribution Conditions (as defined in the Partnership Agreement)	Yes
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This Capital Contribution shall be used to pay \$150,000.00 of Developer Fee, to fund \$84,969.00 for construction costs and the remainder shall be used to pay down the Construction Loan.

Third Capital Contribution	\$_____00	[CONVERSION] Payable upon satisfaction of the Third Contribution Conditions (as defined in the Partnership Agreement)	No
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Fourth Capital Contribution	\$_____00	[8609] Payable upon satisfaction of the Fourth Contribution Conditions (as defined in the Partnership Agreement)	No
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General Partner Capital Contributions	Amount of Capital Contribution	Capital Contribution Due Date
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[Signature/Notary Page to Exhibit D to Construction Loan Agreement]

EXHIBIT F

CONSTRUCTION FUNDS SCHEDULE

I. LOANS

<u>Lender/Program</u>	<u>Loan Amount</u>	<u>Required Funding Date</u>
U.S. Bank National Association/Construction Loan	\$_____	\$_____.00 on or before the Completion Date and the remainder shall be funded after the proceeds of the Bonds are used
County of Contra Costa CDBG Loan	\$_____	On or before the Closing Date, except \$10,000 retention
City of Pinole Loan	\$_____	
Seller Loan	\$_____	At Closing
CCRC Permanent Loan	\$_____	At Conversion

II. GRANTS

<u>Source of Grants</u>	<u>Amount</u>	<u>Required Funding Date</u>
<i>None.</i>	<i>None.</i>	<i>None.</i>

III. EQUITY

<u>Funder</u>	<u>Amount</u>	<u>Required Funding Date</u>
Investor/General Partner	\$_____ (includes \$_____00 capital contribution of General Partner)	As set forth on <i>Exhibit E</i>

EXHIBIT G

LOAN DOCUMENTS

General Loan Documents

1. Construction Loan Agreement
2. Note
3. Repayment and Completion Guaranty
4. Environmental and ADA Indemnification Agreement
5. Assignment of Development Services Agreement and Developer Fee Subordination Agreement
6. California Judicial Reference Agreement
7. Partnership Borrowing Authorization
8. Certificate of General Partner
9. Certificate of Guarantor

Security Documents

10. Deed of Trust
11. Deed of Trust Assignment
12. Collateral Assignment of Contract Rights
13. Assignment and Subordination of Construction Contract and Contractor's Consent
14. Assignment and Subordination of Architect's Agreement and Architect's Consent
15. Assignment and Subordination of Engineering Contracts and Engineer's Consent
16. Assignment of Partnership Interests, Capital Contributions and Credits
17. Assignment and Subordination of Property Manager Agreement and Manager's Consent
18. Assignment and Subordination of Contracts Consent
19. Subordination Agreement (County)
20. Subordination Agreement (City)
21. Subordination Agreement (Seller)
22. UCC-1 Financing Statement (DOT)
23. UCC-1 Financing Statement (Borrower Partnership Interest)
24. UCC-1 Financing Statement (General Partner Partnership Interest)

EXHIBIT H

PERMITTED DEVELOPER FEE PAYMENTS

<u>Source of Payment</u>	<u>Amount Permitted</u>	<u>Timing of Payment</u>
Capital Contributions	\$ _____	Prior to the Closing Date
Capital Contribution	\$ _____	Closing Date
Capital Contribution	\$ _____	Conversion Date
Capital Contribution	\$ _____	Receipt of Form 8609
Capital Contribution	\$ _____	Deferred

EXHIBIT I
INTENTIONALLY OMITTED

EXHIBIT J

COMPLIANCE CERTIFICATE

To: U.S. Bank National Association

Per the Construction Loan Agreement executed on ____, 2016 (the "*Loan Agreement*") between EB, L.P. (the "*Borrower*") and U.S. Bank National Association ("*Lender*"). All capitalized terms have the meanings set forth in the Loan Agreement:

The undersigned, being the General Partner of Borrower, hereby certifies that as of the end of the fiscal year there were no Defaults or Events of Default in regards to the Loan.

If, however, there were any Defaults or Events of Default they are listed below along with the action we propose to take in respect to each Default or Event of Default.

With respect to the Credits:

1. The LIHTC Documents are in full force and effect.
2. There have been no occurrences which would result in a loss or material reduction in the amount
3. of any Credits.
4. The Borrower has not received a Form 8823 or any other notice of non-compliance from the Credit Agency or any other Governmental Agency.
5. The Form 8609 has been or is anticipated to be received by the date required in the Partnership Agreement.
6. Borrower has provided Lender with all required LIHTC Documents.
7. If required by the Internal Revenue Code, the Tax Credit LURA has been recorded in the appropriate filing office.

Date: _____

BORROWER:

EB, L.P.,

a California limited partnership

By: EB LLC, a California limited
liability company, its sole general partner

By: Eden Investments, Inc., a California
nonprofit public benefit corporation,
its sole member/manager

By: _____
Name: Linda Mandolini
Title: President

EXHIBIT K

GUARANTOR COMPLIANCE CERTIFICATE

Loan Amount: \$29,476,000.00
Revised for the Quarter-Annual Period Ended _____, 20__
(the “Quarter-Annual Date”)

With reference to the Construction Loan Agreement dated January 15, 2015, by and among EB, L.P. and U.S. Bank National Association, and with respect to the Repayment and Completion Guaranty from Eden Housing, Inc., a California nonprofit public benefit corporation (“**Guarantor**”), Guarantor hereby certifies as follows (each capitalized term used herein having the same meaning given to it in the Guaranty unless otherwise specified):

a) As of the Quarter-Annual Date, Guarantor’s net Liquidity is: \$ _____
Minimum requirement per the Loan Agreement: \$5,000,000.00.

b) As of the Quarter-Annual Date, Guarantor’s Net Worth is: \$ _____
Minimum requirement per the Loan Agreement: \$25,000,000.00.

c) As of the Quarter-Annual Date, there exists no default or any condition, event or act which constitutes an Event of Default under the Loan Agreement or Guaranty.

GUARANTOR:

EDEN HOUSING, INC., a California nonprofit public
benefit corporation

By: _____
Name: _____
Title: _____

EXHIBIT L

COMMERCIAL REAL ESTATE STANDARD INSURANCE REQUIREMENTS

II. PROPERTY INSURANCE

A. DURING CONSTRUCTION

An ORIGINAL (or certified copy) Builder's All-Risk, Completed Value, Non-Reporting Form Policy or Acord 28 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Mortgagee Clause naming U.S. Bank National Association as Mortgagee ISAA ATIMA, with a 30-day notice to Lender in the event of cancellation, non-renewal or material change; OR
2. Lender's Loss Payable Endorsement (ISO 1218 or similar) with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement
4. Intentionally Omitted
5. No Coinsurance Clause
6. Flood Insurance
7. Coastal and Other Wind Coverage
8. Collapse and Earthquake Coverage
9. Vandalism and Malicious Mischief Coverage
10. Boiler and Machinery Coverage (aka Electrical and Mechanical Breakdown)
11. Demolition, Increased Cost of Construction Coverage
12. In-Transit Coverage
13. Partial Occupancy Permitted
14. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association
15. Waiver of Subrogation against any party whose interest are covered in the policy
16. Delay in Completion or Delay in Rents/Startup Coverage

17. Coverage to be effective upon the date of the Notice to Proceed, the date of site mobilization or the start of any shipment of materials, machinery or equipment to the site, whichever is earlier, and to remain in effect until replaced by permanent All Risk Property Insurance described below, or until such other time as may be mutually agreed upon by U.S. Bank National Association and Borrower.
18. Coverage shall be non-cancellable through term of project with automatic extension provision of at least 60 days.

B. UPON COMPLETION

An ORIGINAL (or certified copy) All-Risk Hazard Insurance Policy or Acord 28 Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current A.M. Best's Insurance Guide Rating of at least A-IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Mortgagee Clause naming the U.S. Bank National Association as Mortgagee ISAA ATIMA with a 30-day notice to Lender in the event of cancellation, non-renewal or material change; OR
2. Lender's Loss Payable Endorsement (ISO 1218 or similar) with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement
4. Intentionally Omitted
5. No Coinsurance Clause
6. Boiler and Machinery Coverage (aka Electrical and Mechanical Breakdown)
7. Sprinkler Leakage Coverage
8. Vandalism and Malicious Mischief Coverage
9. Flood Insurance
10. Loss of Rents Insurance in an amount of not less than 100% of one year's Rental Value of the Project. "Rental Value" shall include:
 - a) The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget,
 - b) The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower, and
 - c) The fair rental value of any portion of the Project which is occupied by Borrower.

11. One year's business interruption insurance in an amount acceptable to Lender.
12. Collapse and Earthquake Coverage
13. Coastal & Other Wind Coverage
14. Extra Expense Coverage
15. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association
16. Waiver of Subrogation against any party whose interest are covered in the policy
17. Demolition and Increased Cost of Construction

III. LIABILITY INSURANCE

An ORIGINAL Acord 25 Certificate of Liability Insurance naming the borrowing entity as an insured, providing coverage on an "occurrence" rather than a "claims made" basis and written by a carrier approved by the Lender, with a current A.M. Best's Insurance Guide Rating of at least A-IX. (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Combined general liability policy limit of at least \$5,000,000.00 each occurrence and aggregate applying liability for Bodily Injury, Personal Injury, Property Damage, Contractual, Products and Completed Operations which combined limit may be satisfied by the limit afforded under the Commercial General Liability Policy, or by such Policy in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided, the coverage afforded under any such Umbrella or Excess Liability Policy is at least as broad in all material respects as that afforded by the underlying Commercial General Liability Policy. Such policies must contain a Separations of Insureds / Severability of Interest clause.
2. Intentionally Omitted
3. Aggregate limit to apply per location
4. Borrower's coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association
5. Waiver of Subrogation against any party whose interest are covered in the policy
6. Additional Insured Endorsement naming U.S. Bank National Association as an additional insured with a 30-day notice to Lender in the event of cancellation, non-renewal or material change. A Severability of Interests provision should be included.

IV. GENERAL REQUIREMENTS

1. All policies of insurance required herein must contain an endorsement or agreement by the insurer that any loss will be payable in accordance with the term of such policy notwithstanding any act or negligence of Borrower or any party holding under Borrower which

might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

2. If Lender consents, Borrower may provide any of the required insurance through blanket policies carried by Borrower and covering more than one location, or by policies procured by a party holding under Borrower; provided, however, all such policies must be in form and substance and issued by companies reasonably satisfactory to Lender.

V. **OTHER COVERAGES.** Lender shall have the right from time to time to make changes (including without limitation increases to required liability limits) to the foregoing insurance requirements and/or to require additional coverages not described above. In addition, the above insurance requirements are subject to change or the imposition of additional coverages if required by applicable laws, regulations or policies applicable to Lender or the Project.

EXHIBIT M
INTENTIONALLY OMITTED

EXHIBIT N

U.S. BANK RIDER

This Rider is attached to and made a part of the Construction Loan Agreement (the “*Loan Agreement*”) evidencing and setting forth, terms and conditions of a loan (the “*Loan*”) in the amount of \$29,476,000.00 from the proceeds of those certain Multifamily Housing Revenue Bonds issued by the California Municipal Finance Authority and assigned to the U.S. Bank National Association, a national banking association existing under the laws of the United States of America, whose mailing address is 4747 Executive Drive, 3rd Floor, San Diego, California 92121 (hereinafter called “*Lender*”), to EB, L.P., a California limited partnership (the “*Borrower*”), for the construction and development financing of East Bluff Apartments (the “*Project*”). Words with initial capital letters used but not defined herein shall have the respective meanings assigned thereto in the Loan Agreement.

U.S. Bancorp Community Development Corporation, a Minnesota corporation “*Investor Limited Partner*”) has been admitted to the Borrower as its limited partner upon the execution of a certain Amended and Restated Partnership Agreement (referred to herein as the “*Partnership Agreement*”), together with certain other documents relating thereto.

Upon satisfaction of certain conditions, including the delivery of this Rider, Investor Limited Partner will make certain equity contributions to Borrower pursuant to the terms and conditions set forth in the Partnership Agreement. Lender understands and acknowledges that Investor Limited Partner will be relying upon the information and agreements contained in this Rider.

The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement each of the documents evidencing or securing the Loan (collectively, the “*Loan Documents*”) while this Rider remains in full force and effect in accordance with its terms, and that in the event of any inconsistency or conflict between the covenants, terms and conditions of the Loan Documents and this Rider, the following covenants, terms and conditions shall control and prevail while this Rider remains in full force and effect in accordance with its terms.

1. **Non-recourse Obligation.** At no time shall Investor Limited Partner have any liability under the Loan Documents.

2. **General Partner Change.** Notwithstanding the general partner’s pledge and assignment of its partnership interests made to benefit Lender under the Loan Documents, the withdrawal, removal, and/or replacement of the general partner of Borrower pursuant to the terms of the Partnership Agreement shall not, in and of itself, constitute a default under any of the Loan Documents, and any such actions shall not, in and of themselves, result in acceleration of tire maturity of the Loan; provided that any substitute general partner shall be named only with prior, written notice to Lender; and provided further that any such substitute general partner shall be reasonably acceptable to Lender and be selected with reasonable promptness. In addition, at the end of the Compliance Period, the transfer by the Limited Partner of its interest in the Borrower to the General Partner (or an Affiliate thereof approved by Lender) (as defined in the Partnership Agreement) shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder; provided that Lender shall be provided prior, written notice of the intention to effect such transfer; and provided further still that no other default or event of default shall then be existing under the Loan Documents or any of them. The Lender shall not charge a transfer fee in connection with such permitted transfers; however, Lender shall be entitled to be reimbursed by Borrower for actual out of pocket costs and expenses related thereto, including without limitation, the reasonable fees and expenses of Lender’s counsel.

3. **Transfer of Limited Partner Interests.** The interests of the Investor Limited Partner shall be freely transferable to any Affiliate (as defined in the Loan Documents) of the Investor Limited Partner without the consent or approval of but only with prior, written notice to Lender. The transfer, sale or assignment of limited partnership interests in Borrower to any entity in which the Investor Limited Partner or an Affiliate thereof, has an ownership interest, directly or indirectly, and manages directly or indirectly the affairs of such entity shall be a permitted transfer and shall not require the consent or approval of the Lender; provided however that in the event of non-payment of capital contribution obligations by the transferee pursuant to the terms and conditions of the Partnership Agreement, the Investor Limited Partner shall remain liable for the amount of such unpaid capital contribution obligations. The Lender shall not charge a transfer fee in connection with such permitted transfers; however, Lender shall be entitled to be reimbursed by Borrower for actual out of pocket costs and expenses related thereto, including without limitation, the reasonable fees and expenses of Lender's counsel.

4. **Replacement of Property Management Lender.** The Lender acknowledges that the Investor Limited Partner has the right to require removal of the property management Lender pursuant to the Partnership Agreement and the Lender shall not unreasonably withhold its consent to such replacement of the property management Lender; provided that in each instance, Lender shall be entitled to receive a collateral assignment of the property management agreement which shall contain a usual and customary subordination from the property management Lender, all in form and substance satisfactory to Lender.

5. **Notice.** All notices to Borrower's Investor Limited Partner shall be sent to the following address unless otherwise directed by the Investor Limited Partner in writing:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, Missouri 63103
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attention: Jill Goldstein, Esq.
Phone: (402) 346-6000

6. **Notice and Cure Rights.** Lender will give the Investor Limited Partner a copy of any written notice (at the Investor Limited Partner's address set forth above) that it gives to Borrower under the Loan Documents. Lender will allow the Investor Limited Partner ten (10) days after giving the Investor Limited Partner notice to cure a monetary default under the Loan Documents other than payments due at maturity. Lender will allow the Investor Limited Partner up to thirty (30) days after giving the Investor Limited Partner notice to cure any non-monetary default under the Loan Documents; provided however that, in the event a non-monetary default is not susceptible to being cured within such thirty (30) days, Lender will allow the Investor Limited Partner an additional period of up to ninety (90) days to cure such default provided the Investor Limited Partner has commenced to cure such default and is diligently and continuously proceeding to cure such default through the end of such ninety (90) day period. If the Investor Limited Partner makes any such payment or otherwise offers cure of a default,

Lender will accept or reject such action as curing such default on the same basis as if such payment or cure were made directly by Borrower.

Nothing in this Paragraph 6 shall reduce or otherwise limit the rights, remedies or other actions available to the Investor Limited Partner against the Borrower with respect to such default pursuant to the Partnership Agreement or otherwise, including, but not limited to, its rights of removal under Section 9.2 of the Partnership Agreement or its rights of repurchase under Section 5.13 of the Partnership Agreement; provided that, it is understood, acknowledged and agreed that any such actions against the Borrower, if taken by the Investor Limited Partner under the Partnership Agreement or otherwise, shall not, in and of themselves, constitute cure of any default under the Loan Documents or any of them. It is specifically agreed that the Lender shall not require the Investor Limited Partner to cure any default of Borrower which is not susceptible of cure by Investor Limited Partner, but in such event, Lender shall have all of its rights by reason of such uncured default of Borrower.

7. **Insurance and Condemnation Proceeds.** Lender will permit insurance and condemnation proceeds to be used to rebuild and restore the Project provided that (i) sufficient funds are provided to effectively rebuild the Project to a lawful multifamily housing complex substantially similar to the Project as it existed prior to event of casualty or condemnation then giving rise to such proceeds and the need to rebuild or restore the Project; provided that in the event the Project cannot be so rebuilt or restored then the applicable provisions of the Loan Documents relating to reappraisals, remargining and prepaying (in whole or in part) the Loan shall be employed to determine to what extent, if any, the Loan is to be remargined and prepaid, whether as a result of decreased value, decreased Project revenues, reduced cash flows or otherwise but giving credit for business interruption insurance, if any; (ii) Lender shall hold all such proceeds and disburse them based on such reasonable conditions as Lender may impose and (iii) if rebuilding or restoring the Project is reasonably expected to exceed the maturity date of the Loan, Lender will use its best efforts to extend the loan maturity date to the anticipated date of completion of restoration or rebuilding of the Project.

Notwithstanding the foregoing, any such proceeds not to be used to pay costs of rebuilding and restoring the Project (in the event the Project cannot be rebuilt or restored as described in (i) of this Paragraph 7) shall be used to remargin and prepay the Loan and to pay costs associated therewith, including without limitation, any prepayment premium, breakfunding, yield maintenance, termination or breakage fees or other similar amounts, to the extent such amounts are actually owed pursuant to the Loan Documents.

The provisions of this Paragraph 7 shall not apply during such time as an Event of Default has occurred under the Loan Documents and has not been cured pursuant the terms thereof.

8. **Disbursement Requirements.** The parties agree that Investor Limited Partner shall have the right to review and approve draws from proceeds of the First Capital Contribution held by Lender.

9. **Intentionally Omitted.**

10. **Intentionally Omitted.**

11. **Equity Pay-in Schedule.** Notwithstanding anything to the contrary in the Loan Documents, any and all terms of the Loan Documents relating to the requirement of the Investor Limited Partner to make capital contributions to the Borrower (including as set forth in any assignment of capital contributions to Lender) shall be expressly subject to the terms and conditions of the Partnership Agreement, and specifically, to the terms and conditions required to be met by the Borrower in connection with each equity contribution as set forth in the Partnership Agreement.

12. **Investor Limited Partner Approvals.** Notwithstanding anything to the contrary in the Loan Documents, the prior written approval of the Investor Limited Partner shall be required for any withdrawal from or disbursement of funds from the replacement reserve account, operating reserve account, or any other reserve account pledged to Lender and maintained with Lender; provided that notwithstanding the foregoing, no prior written approval of the Investor Limited Partner shall be required during such time as (a) a monetary default has occurred and is continuing under the terms of the Loan Documents, and (b) real estate tax payments or require insurance premium payments with respect to the Project remain unpaid to the extent required pursuant to the Loan Documents.

13. **Amendments.** Any amendment of the Partnership Agreement that (a) does not, in the discretion of the Investor Limited Partner, materially and adversely affect the Lender, (b) solely effects a transfer of the Investor Limited Partner's interest which is permitted pursuant to Section 3 hereof or (c) memorializes an upward or downward credit adjuster which is contemplated under the terms and conditions of the Partnership Agreement at closing, shall, in any such case, not require the consent or approval of the Lender, however, the Lender shall be provided notice and copies of any such amendments. Notwithstanding anything to the contrary in the Loan Documents, Lender shall not amend or waive any term or provision of the Loan Documents or consent to a departure therefrom by Borrower in any manner which adversely affects Investor Limited Partner's rights under the Partnership Agreement, without the prior written consent of Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed; provided that notwithstanding the foregoing, no prior written approval of the Investor Limited Partner shall be required during the continuance of an Event of Default under the Loan Documents.

14. **Termination of Rider.** This Rider shall terminate and be of no further force or effect, without further action on the part of any party, if (a) U.S. Bancorp Community Development Corporation or an Affiliate thereof (collectively, "**USBCDC**") is (i) no longer the Investor Limited Partner in the Borrower and (ii) is not the general partner, managing member, or non-member manager of the Investor Limited Partner in the Borrower or (b) the entity (or an Affiliate thereof) which holds more than 50% of the ownership interest in USBCDC is no longer the same entity (or an Affiliate thereof) which holds more than 50% of the ownership interest in Lender.

15. **Counterparts.** This Rider may be executed in counterparts.

16. **Intended Beneficiaries.** The parties intend that the USBCDC and the Lender are the sole beneficiaries of this Rider, and that no person other than USBCDC and the Lender may directly or indirectly rely upon or enforce the provisions of this Rider, whether as a third party beneficiary or otherwise.

17. **Defaults.** Notwithstanding anything to the contrary in the Loan Documents, an Event of Default in the Partnership Agreement shall not constitute an Event of Default under the Loan Documents unless the Investor Limited Partner has provided the Lender with written notice thereof and such written notice further states that the Investor Limited Partner has not waived (and will not waive) such Event of Default.

18. **Loan Balancing.** Notwithstanding anything to the contrary in the Loan Documents, the Investor Limited Partner may, but shall at no time during the term of the Loan, be required to make any advance of cash to the Borrower to pay Project Costs to bring the Loan In Balance (as defined in the Loan Documents), or otherwise in any way remedy the failure of the Loan to be In Balance.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned duly authorized signatories of the respective parties have caused this Rider to be executed and delivered as of January 15, 2015.

BORROWER:

EB, L.P.,

a California limited partnership

By: EB LLC, a California limited liability company, its sole general partner

By: Eden Investments, Inc., a California nonprofit public benefit corporation, its sole member/manager

By: _____

Name: Linda Mandolini

Title: President

[Signature pages continue]

[Signature Page to Exhibit N to Construction Loan Agreement]

U.S. BANK NATIONAL ASSOCIATION,
a national banking association, as Lender,

By: _____
Name: _____
Title: _____

[Signature pages continue]

[Signature Page to Exhibit N to Construction Loan Agreement]

**U.S. BANCORP COMMUNITY
DEVELOPMENT CORPORATION,**
a Minnesota corporation

By: _____
Name: Joel Oliver
Title: Assistant Vice President

[End of signature pages]

[Signature Page to Exhibit N to Construction Loan Agreement]