

DEVELOPMENT LOAN AGREEMENT  
(Church Lane and Idaho Apartments)

This Development Loan Agreement (the "Agreement") is dated December 1, 2017, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and San Pablo Preservation, L.P., a California limited partnership ("Borrower").

RECITALS

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

B. Borrower is acquiring from Church Lane-Rubicon Partners, a California limited partnership (the "Church Lane Seller") that certain real property located at 2555 Church Lane in the City of San Pablo, County of Contra Costa, State of California, as more particularly described in Exhibit A-1 (the "Church Lane Property"). The Church Lane Property is improved with twenty-two (22) units of affordable housing and attendant site improvements (the "Church Lane Improvements").

C. Borrower is acquiring from Idaho Apartments Associates, a California limited partnership (the "Idaho Apartments Seller") that certain real property located at 10203 San Pablo Avenue in the Cities of El Cerrito and Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit A-2 (the "Idaho Apartments Property"). The Idaho Apartments Property is improved with twenty-nine (29) units of affordable housing and attendant site improvements (the "Idaho Apartments Improvements").

D. The Church Lane Improvements and the Idaho Apartments Improvements, are collectively referred to as the "Improvements." The Church Lane Property and the Idaho Apartments Property, are collectively referred to as the "Property." The Improvements and the Property are collectively referred to as the "Development."

E. The Improvements are in need of rehabilitation. To maximize the amount of rehabilitation that may be performed on the Improvements and to provide for a common scheme of financing for the Development, the rehabilitation will be financed with a single issuance by the California Municipal Finance Authority of Tax-Exempt Multifamily Housing Revenue Bonds, and a single allocation of low income housing tax credits from the California Tax Credit Allocation Committee ("TCAC").

F. The County previously provided loans to the Sellers as described in more detail in Section 2.1 below. In support of the rehabilitation of the Improvements and the common scheme of financing, the County has agreed to restructure the Original County Loans and consent to their assignment to Borrower.

G. The Restructured Church Lane Loan and the Restructured Idaho Apartments Loan are together referred to as the "Combined County Loan." The Combined County Loan is evidenced by this Agreement, the Notes, the Regulatory Agreements, and the Intercreditor Agreement, and is secured by the Deed of Trust.

H. The Combined County Loan includes the following financing sources: (i) Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"), which must be used in accordance with 24 C.F.R. Part 92 (the "HOME Regulations"); (ii) Housing Opportunities for Persons with AIDS Program funds from HUD pursuant to the HOPWA Program ("HOPWA Funds") which are available to and administered by the County, as a subrecipient of the City of Oakland, which is the representative for the Alameda-Contra Costa County Eligible Metropolitan Area, and which must be used in accordance with 24 C.F.R. Section 574 et seq.; and (iii) funds from HUD under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG Funds") which must be used in accordance with 24 C.F.R. Part 570.

I. Due to the assistance provided Borrower through the Combined County Loan, the County is designating twenty-two (22) units of affordable housing as assisted by the County (the "County-Assisted Units"). The County-Assisted Units are comprised of eleven (11) units at the Church Lane Improvements, and eleven (11) units at the Idaho Apartments Improvements.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

- (a) "Agreement" means this Development Loan Agreement.
- (b) "AHP Loan" has the meaning set forth in Section 1.1(f)(viii).
- (c) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:
  - (i) property taxes and assessments imposed on the Development;
  - (ii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the Permanent Loan;
  - (iii) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin;
  - (iv) fees paid to the Government Lender with respect to the Government Lender Note;
  - (v) payment to HCD of a portion of the accrued interest on the HCD MHP-SH Loan pursuant to California Code of Regulations, Title 25, Section 7308;

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

(vii) the Partnership/Asset Fee;

(viii) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Fee;

(ix) premiums for insurance required for the Improvements to satisfy the requirements of any lender of Approved Financing;

(x) utility services not paid for directly by tenants, including water, sewer, and trash collection;

(xi) maintenance and repair expenses and services;

(xii) any annual license or certificate of occupancy fees required for operation of the Development;

(xiii) security services;

(xiv) advertising and marketing;

(xv) cash deposited into the Replacement Reserve Account in the amount set forth in Section 4.1(a);

(xvi) cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 4.1(b) (excluding amounts deposited to initially capitalize the account);

(xvii) payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 3.11;

(xviii) extraordinary operating costs specifically approved in writing by the County;

(xix) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

(d) "Annual Payment" has the meaning in Section 2.10(a).

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

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

(i) the Restructured El Cerrito Loan;

(ii) California Municipal Finance Authority 2017 Multifamily Housing Revenue Note (Church and Idaho Apartments) issued by the California Municipal Finance Authority (the "Government Lender") in the approximate amount of Twelve Million One Hundred Seven Thousand One Hundred Fifty-Nine Dollars (\$12,107,159) (the "Government Lender Note"), the proceeds of which are loaned to Borrower by the Government Lender pursuant to a funding loan to the Government Lender by the Bank (the "Bank Loan") which will convert to a permanent loan in the approximate amount of Two Million Ninety-Six Thousand Dollars (\$2,096,000) (the "Permanent Loan");

(iii) the Low Income Housing Tax Credit investor equity funds in the approximate amount of Seven Million Two Hundred Ten Thousand Seven Hundred Sixteen Dollars (\$7,210,716) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(iv) the loan from Church Lane Seller in the approximate amount of One Million Five Hundred Thirty-Six Thousand Three Hundred Sixty-Seven Dollars (\$1,536,367) (the "Church Lane Seller Loan");

(v) the loan from Idaho Apartments Seller in the approximate amount of Six Hundred Eighty-Two Thousand One Hundred Sixty-Three Dollars (\$682,163) (the "Idaho Apartments Seller Loan");

(vi) the loan from RCD of state certificated credits in the approximate amount of One Million Five Hundred Seventeen Thousand Four Hundred Sixty-Four Dollars (\$1,517,464) (the "State Credits Loan");

(vii) the capital contribution from Borrower's general partner in the approximate amount of One Million Seventeen Thousand Two Hundred Eleven Dollars (\$1,017,211) (the "GP Capital Contribution");

(viii) Affordable Housing Program Loan from the Federal Home Loan Bank of San Francisco in the approximate amount of Four Hundred Ninety Thousand Dollars (\$490,000) (the "AHP Loan"); and

(ix) the permanent loan of Multifamily Housing Program – Supportive Housing funds from the California Department of Housing and Community Development

("HCD") in the approximate amount of Three Million One Hundred Sixty-Two Thousand Five Hundred Sixty-Four Dollars (\$3,162,564) (the "HCD MHP-SH Loan").

(g) "Assignment Agreements" means collectively, the Idaho Apartments Assignment Agreement and the Church Lane Assignment Agreement.

(h) "Bank" means MUFG Union Bank, N.A., a national banking association, and its successors and assigns.

(i) "Bank Loan" has the meaning set forth in Section 1.1(f)(ii).

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

(k) "Borrower's Shared Portion of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.

(l) "CDBG Funds" has the meaning set forth in Paragraph H of the Recitals.

(m) "Church Lane Assignment Agreement" means the Assignment, Assumption and Consent Agreement dated December 1, 2017, by and among the Church Lane Seller, the County, and Borrower, pursuant to which the Church Lane Seller is assigning the Original Church Lane Loan to Borrower and Borrower is assuming the Original Church Lane Loan, as consented to by the County.

(n) "Church Lane County Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the County-Assisted Units located in the Church Lane Improvements, to be recorded against the Church Lane Property.

(o) "Church Lane Improvements" has the meaning set forth in Paragraph B of the Recitals.

(p) "Church Lane Property" has the meaning set forth in Paragraph B of the Recitals.

(q) "Church Lane Seller" has the meaning set forth in Paragraph B of the Recitals.

(r) "Church Lane Seller Loan" has the meaning set forth in Section 1.1(f)(iv).

(s) "Closing" means the date that Borrower acquires the Property and the grant deeds evidencing such acquisition are recorded in the Official Records.

(t) "Combined County Loan" has the meaning set forth in Paragraph G of the Recitals.

(u) "Commencement of Construction" has the meaning set forth in Section 3.2.

(v) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by El Cerrito, Richmond and San Pablo to certify that the Development may be legally occupied or that the work has been completed in accordance with the applicable governmental requirements.

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

(x) "County Additional Prorata Share" means the result obtained by dividing Combined County Loan by the sum of the Combined County Loan and the Restructured El Cerrito Loan.

(y) "County-Assisted Units" has the meaning set forth in Paragraph I of the Recitals.

(z) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Combined County Loan, by the sum of the Combined County Loan, the Restructured El Cerrito Loan and the HCD MHP-SH Loan.

(aa) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, North American Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Combined County Loan and performance of the covenants of the Loan Documents.

(bb) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

(cc) "Developer Fee" has the meaning set forth in Section 3.11.

(dd) "Development" has the meaning set forth in Paragraph D of the Recitals.

(ee) "El Cerrito" means the City of Cerrito, California, a municipal corporation.

(ff) "Event of Default" has the meaning set forth in Section 6.1.

(gg) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(hh) "Final Cost Certification" has the meaning set forth in Section 4.2.

(ii) "Government Lender" has the meaning set forth in Section 1.1(g)(ii).

(jj) "Government Lender Note" has the meaning set forth in Section 1.1(g)(ii).

(kk) "GP Capital Contribution" has the meaning set forth in Section 1.1(g)(vii).

(ll) "Gross Revenue" means for each calendar year, all revenue, income,

receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:

- (i) all rents, fees and charges paid by tenants;
- (ii) Section 8 payments or other rental subsidy payments received for the dwelling units;
- (iii) deposits forfeited by tenants;
- (iv) all cancellation fees;
- (v) price index adjustments and any other rental adjustments to leases or rental agreements;
- (vi) net proceeds from vending and laundry room machines;
- (vii) the proceeds of business interruption or similar insurance not paid to senior lenders;
- (viii) the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and
- (ix) condemnation awards for a taking of part or all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, required deposits to reserve accounts, capital contributions or similar advances.

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

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

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

or regulation promulgated thereto.

- (pp) "HCD" has the meaning set forth in Section 1.1(g)(ix)
- (qq) "HCD MHP-SH Loan" has the meaning set forth in Section 1.1(g)(ix).
- (rr) "HOME Funds" has the meaning set forth in Paragraph H of the Recitals.
- (ss) "HOME Regulations" has the meaning set forth in Paragraph H of the Recitals.
- (tt) "HOPWA Funds" has the meaning set forth in Paragraph H of the Recitals.
- (uu) "Housing Authority" means the Housing Authority of Contra Costa County.
- (vv) "HUD" has the meaning set forth in Paragraph H of the Recitals.
- (ww) "Idaho Apartments Assignment Agreement" means the Assignment, Assumption and Consent Agreement dated December 1, 2017, by and among the Idaho Apartments Seller, the County, and Borrower, pursuant to which the Idaho Apartments Seller is assigning the Original Idaho Apartments Loan to Borrower and Borrower is assuming the Original Idaho Apartments Loan, as consented to by the County.
- (xx) "Idaho Apartments HOPWA and County Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the County-Assisted Units located in the Idaho Apartments Improvements, to be recorded against the Idaho Apartments Property.
- (yy) "Idaho Apartments Improvements" has the meaning set forth in Paragraph C of the Recitals.
- (zz) "Idaho Apartments Property" has the meaning set forth in Paragraph C of the Recitals.
- (aaa) "Idaho Apartments Seller" has the meaning set forth in Paragraph C of the Recitals.
- (bbb) "Idaho Apartments Seller Loan" has the meaning set forth in Section 1.1(f)(v).
- (ccc) "Improvements" has the meaning set forth in Paragraph D of the Recitals.
- (ddd) "Intercreditor Agreement" means that certain Subordination and Intercreditor Agreement of even date herewith entered into by and among El Cerrito, the County, and Borrower related to the Restructured El Cerrito Loan, and the Combined County Loan to be recorded against the Property.



(eee) "Investor Limited Partner" means Red Stone Equity-2017 National Fund, L.P., a Delaware limited partnership, and its permitted successors and assigns.

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

(ggg) "Loan Documents" means this Agreement, the Notes, the Regulatory Agreements, the Intercreditor Agreement, and the Deed of Trust.

(hhh) "Notes" means collectively, the Restructured Church Lane Note and the Restructured Idaho Apartments Note.

(iii) "Official Records" means the official records of Contra Costa County.

(jjj) "Operating Reserve Account" has the meaning set forth in Section 4.1(b).

(kkk) "Original Church Lane CDBG Loan" has the meaning set forth in Section 2.1(a).

(lll) "Original Church Lane CDBG Note" has the meaning set forth in Section 2.1(a).

(mmm) "Original Church Lane Deed of Trust" has the meaning set forth in Section 2.1(a).

(nnn) "Original Church Lane HOME Loan" has the meaning set forth in Section 2.1(a).

(ooo) "Original Church Lane Loan Agreement" has the meaning set forth in Section 2.1(a).

(ppp) "Original Church Lane HOME Note" has the meaning set forth in Section 2.1(a).

(qqq) "Original Church Lane Regulatory Agreement" has the meaning set forth in Section 2.1(a).

(rrr) "Original County Loans" means collectively, the Original Church Lane HOME Loan, the Original Church Lane CDBG Loan, the Original Idaho Apartments CDBG Loan, the Original Idaho Apartments HOPWA Loan, and the Original Idaho Apartments Second HOPWA Loan.

(sss) "Original Idaho Apartments CDBG & HOPWA Deed of Trust" has the meaning set forth in Section 2.1(b)(i).

(ttt) "Original Idaho Apartments CDBG & HOPWA Loan Agreement" has the meaning set forth in Section 2.1(b)(i).

(uuu) "Original Idaho Apartments CDBG & HOPWA Regulatory Agreement"

has the meaning set forth in Section 2.1(b)(i).

(vvv) "Original Idaho Apartments CDBG Loan" has the meaning set forth in Section 2.1(b)(i).

(www) "Original Idaho Apartments CDBG Note" has the meaning set forth in Section 2.1(b)(i).

(xxx) "Original Idaho Apartments HOPWA Loan" has the meaning set forth in Section 2.1(b)(i).

(yyy) "Original Idaho Apartments HOPWA Note" has the meaning set forth in Section 2.1(b)(i).

(zzz) "Original Idaho Apartments Intercreditor Agreement" has the meaning set forth in Section 2.1(b)(i).

(aaaa) "Original Idaho Apartments Second HOPWA Loan" has the meaning set forth in Section 2.1(b)(ii).

(bbbb) "Original Idaho Apartments Second HOPWA Loan Agreement" has the meaning set forth in Section 2.1(b)(ii).

(cccc) "Original Idaho Apartments Second HOPWA Loan Deed of Trust" has the meaning set forth in Section 2.1(b)(ii).

(dddd) "Original Idaho Apartments Second HOPWA Loan Note" has the meaning

(eeee) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership, dated on or about the date of recordation of the Deed of Trust, that governs the operation and organization of Borrower as a California limited partnership.

(ffff) "Partnership/Asset Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period, and (ii) after the expiration of the Fifteen Year Compliance Period asset management fees payable to partners of Borrower, in the amounts approved by the County as set forth in Section 3.12.

(gggg) "Permanent Loan" has the meaning set forth in Section 1.1(f)(ii).

(hhhh) "Property" has the meaning set forth in Paragraph D of the Recitals.

(iiii) "RCD" means Resources for Community Development, a California nonprofit public benefit corporation.

(jjjj) "Regulatory Agreements" means the Church Lane County Regulatory Agreement and the Idaho Apartments HOPWA and County Regulatory Agreement.

(kkkk) "Replacement Reserve Account" has the meaning set forth in Section 4.1(a).

(llll) "Residual Receipts" means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(mmmm) "Restructured Church Lane CDBG Loan" has the meaning set forth in Section 2.2(a).

(nnnn) "Restructured Church Lane HOME Loan" has the meaning set forth in Section 2.2(a).

(oooo) "Restructured Church Lane Loan" has the meaning set forth in Section 2.2(a).

(pppp) "Restructured Church Lane Note" has the meaning set forth in Section 2.2(a).

(qqqq) "Restructured El Cerrito Loan" means the Three Hundred Fifty Thousand Dollars (\$350,000) loan from El Cerrito to the Idaho Apartments Seller as assigned to and assumed by Borrower, and restructured and so that the new principal amount is Four Hundred Thirty Two Thousand Two Hundred Fifty Dollars (\$432,250).

(rrrr) "Restructured Idaho Apartments CDBG Loan" has the meaning set forth in Section 2.2(b).

(ssss) "Restructured Idaho Apartments HOPWA Loan" has the meaning set forth in Section 2.2(b).

(tttt) "Restructured Idaho Apartments Loan" has the meaning set forth in Section 2.2(b).

(uuuu) "Restructured Idaho Apartments Note" has the meaning set forth in Section 2.2(b).

(vvvv) "Richmond" means the City of Richmond, California, a municipal corporation.

(wwww) "San Pablo" means the City of San Pablo, California, a municipal corporation.

(xxxx) "Sellers" means collectively the Church Lane Seller and the Idaho Apartments Seller.

(yyyy) "Senior Loan" has the meaning set forth in Section 2.6.

(zzzz) "Special Limited Partner" means Red Stone Equity Manager, LLC, a Delaware limited liability company, and its permitted successors and assigns.

- (aaaaa) "State Credits Loan" has the meaning set forth in Section 1.1(f)(vi).
- (bbbbb) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.
- (ccccc) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(f)(iii).
- (dddd) "TCAC" has the meaning set forth in Paragraph E of the Recitals.
- (eeee) "Tenant" means the tenant household that occupies a unit in the Development.
- (ffff) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55<sup>th</sup>) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57<sup>th</sup>) anniversary of this Agreement.
- (ggggg) "Transfer" has the meaning set forth in Section 4.12 below.

## Section 1.2 Exhibits

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

- Exhibit A-1: Legal Description of the Church Lane Property  
 Exhibit A-2: Legal Description of the Idaho Apartments Property  
 Exhibit B: Approved Development Budget

## ARTICLE 2 LOAN PROVISIONS

### Section 2.1 Overview of Original Development Loans.

(a) Church Lane Loan. The County made a loan of One Million Seven Hundred Five Thousand Nine Hundred Thirty-Three Dollars (\$1,705,933) to the Church Lane Seller on December 9, 2015 comprised of Eight Hundred Four Thousand Four Hundred Dollars (\$804,400) in HOME Funds (the "Original Church Lane HOME Loan") and Nine Hundred One Thousand Five Hundred Thirty-Three Dollars (\$901,533) in CDBG Funds (the "Original Church Lane CDBG Loan"). The Original Church Lane HOME Loan and Original Church Lane CDBG Loan were evidenced by that certain Amended and Restated CDBG and HOME Loan Agreement dated December 9, 2015, between the County and the Church Lane Seller (the "Original Church Lane Loan Agreement"), that certain promissory note dated December 9, 2015, executed by the Church Lane Seller for the benefit of the County, in the amount of Eight Hundred Four Thousand Four Hundred Dollars (\$804,400) (the "Original Church Lane HOME Note"), and that certain promissory note dated December 9, 2015, executed by the Church Lane Seller for the benefit of the County, in the amount Nine Hundred One Thousand Five Hundred Thirty-Three

Dollars (\$901,533) (the "Original Church Lane CDBG Note") . The Original Church Lane Loan was secured against the Church Lane Property by a Deed of Trust with Assignment of Rents and Security Agreement dated December 9, 2015, executed by the Church Lane Seller and recorded in the Official Records on January 12, 2016, as Instrument No. 2016-0005266-00 (the "Original Church Lane Deed of Trust"). In connection with the Original Church Lane Loan, the Church Lane Seller and the County entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated December 9, 2015, recorded in the Official Records against the Church Lane Property on January 12, 2016, as Instrument No. 2016-0005265-00 (the "Original Church Lane Regulatory Agreement").

(b) Idaho Apartments Loans.

(i) CDBG/HOPWA Loan. The County made a loan of Seven Hundred Twenty-Five Thousand Dollars (\$725,000) to the Idaho Apartments Seller on November 26, 1996, comprised of Two Hundred Fifty-Five Thousand Dollars (\$255,000) in HOPWA Funds (the "Original Idaho Apartments HOPWA Loan") and Four Hundred Seventy Thousand Dollars (\$470,000) in CDBG Funds (the "Original Idaho Apartments CDBG Loan"). The Original Idaho Apartments HOPWA Loan and Original Idaho Apartments CDBG Loan were evidenced by that certain CDBG/HOPWA Loan Agreement dated November 26, 1996, between the County and the Idaho Apartments Seller (the "Original Idaho Apartments CDBG & HOPWA Loan Agreement"), that certain promissory note dated November 26, 1996, executed by the Idaho Apartments Seller for the benefit of the County, in the amount of Two Hundred Thirty Thousand Dollars (\$230,000), as amended by a Rider dated November 26, 1997 increasing the loan amount to Two Hundred Fifty-Five Thousand Dollars (\$255,000) (the "Original Idaho Apartments HOPWA Note"), and that certain promissory note dated November 26, 1996, executed by the Idaho Apartments Seller for the benefit of the County, in the amount Four Hundred Seventy Thousand Dollars (\$470,000) (the "Original Idaho Apartments CDBG Note"). The Original Idaho Apartments HOPWA Loan and Original Idaho Apartments CDBG Loan were secured against the Idaho Apartments Property by a Deed of Trust and Security Agreement dated November 26, 1996, executed by the Idaho Apartments Seller and recorded in the Official Records on November 27, 1996, as Instrument No. 96223851, as modified on June 10, 1997, by a Modification to Deed of Trust and Security Agreement recorded in the Official Records on August 15, 1997, as Instrument No. 97-0146471-00, (the "Original Idaho Apartments CDBG & HOPWA Deed of Trust"). In connection with the Idaho Apartments HOPWA Loan and Original Idaho Apartments CDBG Loan, the Idaho Apartments Seller and the County entered into a Regulatory Agreement dated November 26, 1996, recorded in the Official Records on November 27, 1996 as Instrument No. 96223852, as amended by a Modification of Regulatory Agreement dated May 12, 1997 and recorded in the Official Records on August 15, 1997, as Instrument No. 97-0146473-00 (the "Original Idaho Apartments CDBG & HOPWA Regulatory Agreement"). The Idaho Apartments HOPWA Loan and Original Idaho Apartments CDBG Loan were also evidenced by an Intercreditor Agreement by and among the County, the Idaho Apartments Seller, and the Redevelopment Agency of the City of El Cerrito dated January 21, 1997, recorded in the Official Records against the Idaho Apartments Property on April 7, 1997, as Instrument No. 97-0056589-00 (the "Original Idaho Apartments Intercreditor Agreement").

(ii) Second HOPWA Loan. The County made a loan of One Hundred Two Thousand Dollars (\$102,000) to the Idaho Apartments Seller on February 26, 1999 of

HOPWA Funds (the "Original Idaho Apartments Second HOPWA Loan"). The Original Idaho Apartments Second HOPWA Loan was evidenced by that certain HOPWA Loan Agreement dated February 26, 1999, between the County and the Idaho Apartments Seller (the "Original Idaho Apartments Second HOPWA Loan Agreement"), that certain promissory note dated January 29, 1999, executed by the Idaho Apartments Seller for the benefit of the County, in the amount of One Hundred Two Thousand Dollars (\$102,000) (the "Original Idaho Apartments Second HOPWA Note"). The Original Idaho Apartments Second HOPWA was secured against the Idaho Apartments Property by a Deed of Trust and Security Agreement dated January 29, 1999, executed by the Idaho Apartments Seller and recorded in the Official Records on July 13, 1999, as Instrument No. 1999-0183259-00, as modified by a Mortgage Loan Rider recorded in the Official Records on July 13, 1999, as Instrument No. 1999-0183260-00, (the "Original Idaho Apartments Second HOPWA Deed of Trust").

(c) Assignment and Assumption of Original County Loans. Concurrently with the execution of this Agreement, Borrower is assuming the Original County Loans from the Sellers, pursuant to the Assignment Agreements.

## Section 2.2 Combined County Loan.

(a) Church Lane Loan Amount. The outstanding principal balance of the Original Church Lane HOME Loan as of the date of this Agreement is Eight Hundred Four Thousand Four Hundred Dollars (\$804,400). As of the date of this Agreement the Original Church Lane HOME Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Church Lane HOME Loan is Forty-Eight Thousand Nine Hundred Seventy-Seven Dollars (\$48,977), which amount is being capitalized into the outstanding principal balance on the Original Church Lane HOME Loan for a total of Eight Hundred Fifty-Three Thousand Three Hundred Seventy-Seven Dollars (\$853,377) (the "Restructured Church Lane HOME Loan"). The outstanding principal balance of the Original Church Lane CDBG Loan as of the date of this Agreement is Nine Hundred One Thousand Five Hundred Thirty-Three Dollars (\$901,533). As of the date of this Agreement the Original Church Lane CDBG Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Church Lane CDBG Loan is Forty-Six Thousand Eight Hundred Nineteen Dollars (\$46,819), which amount is being capitalized into the outstanding principal balance on the Original Church Lane CDBG Loan for a total of Nine Hundred Forty-Eight Thousand Three Hundred Fifty-Two Dollars (\$948,352) (the "Restructured Church Lane CDBG Loan"). The Restructured Church Lane HOME Loan and the Restructured Church Lane CDBG Loan are collectively referred to as the "Restructured Church Lane Loan," evidenced by a promissory note executed by Borrower in the amount of the Restructured Church Lane Loan for the benefit of the County (the "Restructured Church Lane Note").

(b) Idaho Apartments Loan Amount. The outstanding principal balance of the Original Idaho Apartments CDBG Loan as of the date of this Agreement is Four Hundred Seventy Thousand Dollars (\$470,000). As of the date of this Agreement the Original Idaho Apartments CDBG Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Idaho Apartments CDBG Loan is Two Hundred Ninety-Seven Thousand Four Hundred Eighty-Five Dollars (\$297,485), which amount is being capitalized into the outstanding principal balance on the Original Idaho

Apartments CDBG Loan for a total of Seven Hundred Sixty-Seven Thousand Four Hundred Eighty-Five Dollars (\$767,485) (the "Restructured Idaho Apartments CDBG Loan"). The outstanding principal balance of the Original Idaho Apartment HOPWA Loan as of the date of this Agreement is Two Hundred Fifty-Five Thousand Dollars (\$255,000). As of the date of this Agreement the Original Idaho Apartments Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Idaho Apartments Loan is One Hundred Sixty Thousand Three Hundred Ninety-Five Thousand Dollars (\$160,395), which amount is being capitalized into the outstanding principal balance on the Original Idaho Apartments Loan for a total of Four Hundred Fifteen Thousand Three Hundred Ninety-Five Dollars (\$415,395) (the "Restructured Idaho Apartments HOPWA Loan"). The outstanding principal balance of the Original Idaho Apartments Second HOPWA Loan as of the date of this Agreement is One Hundred Two Thousand Dollars (\$102,000). The Restructured Idaho Apartments HOPWA Loan, the Restructured Idaho Apartments CDBG Loan, and the Original Idaho Apartments Second HOPWA Loan are collectively referred to as the "Restructured Idaho Apartments Loan," evidenced by a promissory note executed by Borrower in the amount of the Restructured Idaho Apartments Loan for the benefit of the County (the "Restructured Idaho Apartments Note").

(c) Combined County Loan. The Combined County Loan equals the sum of the Restructured County Church Lane Loan and the Restructured County Idaho Loan for a total amount of Three Million Eighty-Six Thousand Six Hundred Eleven Dollars (\$3,086,611). Borrower's obligation to repay the Combined County Loan is evidenced by the Notes.

### Section 2.3 New County Loan Documents.

(a) Loan Agreement. This Agreement replaces the following documents in their entirety: the Original Church Lane Loan Agreement, the Original Idaho Apartments HOPWA & CDBG Loan Agreement, and the Original Idaho Apartments Second HOPWA Loan Agreement.

(b) Promissory Notes. At Closing, the County is cancelling the Original the Original Church Lane HOME Note, the Original Church Lane CDBG Note, the Original Idaho Apartments CDBG Note, the Original Idaho Apartments HOME Note, and the Original Idaho Apartments Second HOPWA Loan Note, and Borrower will execute the Notes.

(c) Deed of Trust. At Closing, the County is reconveying the Original Church Lane Deed of Trust, the Original Idaho Apartments CDBG & HOPWA Deed of Trust, and the Original Idaho Apartments Second HOPWA Loan Deed of Trust, and recording the Deed of Trust as a lien against the Property.

(d) Regulatory Agreements. At Closing, the County is terminating the Original Idaho Apartments Regulatory Agreement, the Original Idaho Apartments CDBG & HOPWA Regulatory Agreement, and the Original Church Lane Regulatory Agreement, and recording the Regulatory Agreements against the Property.

(e) Intercreditor Agreement. At Closing, the County is terminating the Original Church Lane Intercreditor Agreement and recording the Intercreditor Agreement against the Property.

Section 2.4 Interest on Loans.

(a) Restructured Church Lane Loan. Subject to the provisions of subsection (c) below, interest accrues on the outstanding principal balance of the Restructured Church Lane Loan at a rate of interest equal to 2.64%, compounding annually, commencing on the date of the Restructured Church Lane Note. It is the intent that the interest rate stated in this Section 2.4(a) is the Applicable Federal Rate applicable to long-term loans with annual compounding, as calculated in accordance with Internal Revenue Code Section 1274(d) as of the date of the Restructured Church Lane Note.

(b) Restructured Idaho Apartments Loan. Subject to the provisions of subsection (c) below, interest accrues on the outstanding principal balance of the Restructured Idaho Apartments Loan at a rate of interest equal to 2.64%, compounding annually, commencing on the date of the Restructured Idaho Apartments Note. It is the intent that the interest rate stated in this Section 2.4(b) is the Applicable Federal Rate applicable to long-term loans with annual compounding, as calculated in accordance with Internal Revenue Code Section 1274(d) as of the date of the Restructured Idaho Apartments Note.

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

Section 2.5 Security.

In consideration of the Combined County Loan, Borrower shall (i) secure its obligation to repay the Combined County Loan, as evidenced by the Notes, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property, junior to the Bank Loan and Permanent Loan pursuant to Section 2.6 below, senior to the Restructured El Cerrito Loan, the AHP Loan, the Seller Loan, and the GP State Credits Loan, and (ii) execute the Regulatory Agreements, and the Intercreditor Agreement, and cause or permit them to be recorded against the Property.

Section 2.6 Subordination.

(a) Any agreement by the County to subordinate the Deed of Trust and/or Regulatory Agreements to an encumbrance securing and/or evidencing the Bank Loan, the Permanent Loan, or any loan obtained by Borrower to refinance the Bank Loan (the "Senior Loan") will be subject to the satisfaction of each of the following conditions:

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

(ii) The lender of the Senior Loan is a state or federally chartered financial institution, a government sponsored enterprise, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.



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

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

(v) The subordination(s) of the Combined County Loan is effective only during the original term of the Senior Loan and any extension of its term provided for in the documents evidencing the Senior Loan executed by Borrower at Closing.

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

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

(c) The County agrees to subordinate the Deed of Trust and the Regulatory Agreements to that certain Rental Assistance Demonstration (RAD) Use Agreement to be entered into between HUD and Borrower, pursuant to a form of subordination agreement provided by HUD and approved by the County.

#### Section 2.7 Conditions Precedent to Closing.

The County is not obligated to authorize Closing, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

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

(b) Borrower holds title to the Property or is acquiring title to the Property

simultaneously with the Closing;

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

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

(e) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.13 below;

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

(g) The Deed of Trust, the Regulatory Agreements, and the Intercreditor Agreement, have been recorded against the Property in the Official Records or will be simultaneously with the Closing;

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

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

(j) Borrower has obtained all permits and approvals necessary for the rehabilitation of the Development;

(k) Borrower has closed the loans and the equity financings that comprise the Approved Financing described in Section 1.1(f)(i) – (ix) and has already received, or is eligible to receive, the funds;

(l) The County has received a fully executed copy of the Partnership Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Investor Equity subject to the terms and conditions contained therein;

(m) The County has received a fully executed copy of the RAD Delayed Conversion Agreement between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance through the Rental Assistance Demonstration Program for five (5) units in the Church Lane Improvements by the Housing Authority;

(n) The County has received a fully executed copy of the Housing Assistance Payment Contract between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance through the Rental Assistance Demonstration Program for twenty-eight (28) units in the Idaho Apartments Improvements by the Housing Authority;

(o) The County has received a fully executed copy of the Agreement to Enter Housing Assistance Payment Contract between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance for five (5) units in the Church Lane Improvements by the Housing Authority;

Section 2.8 Conditions Precedent to Permanent Conversion.

Prior to conversion of the Bank Loan to the Permanent Loan, Borrower shall provide the County the following documentation:

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

(b) Copies of the certificate of occupancy or equivalent final permit sign-offs for the Development;

(c) Current evidence of the insurance coverage meeting the requirements of Section 4.14 below;

(d) A form of Tenant lease;

(e) A Marketing Plan, Tenant Selection Plan, and Social Services Plan as defined in the Regulatory Agreements;

(f) Evidence of marketing for any vacant County Assisted Unit in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of such units, as applicable;

(g) Evidence of compliance with all applicable relocation requirements;

(h) A copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager;

(i) A fully executed copy of the Housing Assistance Payment Contract between Borrower and the Housing Authority governing the provision of project-based Section 8 rental assistance for five (5) units in the Church Lane Improvements by the Housing Authority;

(j) A fully executed copy of the Rental Assistance Demonstration Housing Assistance Payment Contract between Borrower and the Housing Authority governing the provision of project-based Section 8 rental assistance through the Rental Assistance Demonstration Program for five (5) units in the Church Lane Improvements by the Housing Authority; and

(k) A fully executed copy of the Housing Assistance Payment Contract between Borrower and the Housing Authority governing the provision of project-based Section 8 rental assistance through the Rental Assistance Demonstration Program for twenty-eight (28) units in the Idaho Apartments Improvements by the Housing Authority.

#### Section 2.9 Repayment Schedule.

(a) Annual Payments of Combined County Loan. Commencing on June 1, 2020 and on June 1 of each year thereafter during the Term, Borrower shall make a Combined County Loan payment in an amount equal to the sum of (1) the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts and (2) the County Additional Prorata Share multiplied by Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest; and second, to principal.

(b) Payment in Full of Combined County Loan. Borrower shall pay all outstanding principal and accrued interest on the Combined County Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 4.12; (ii) an Event of Default; and (iii) the expiration of the Term.

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

#### Section 2.10 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

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

(i) The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2019 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(ii) A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that

Borrower's calculation of the Lenders' Share of Residual and Borrower's Shared Portion of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

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

(c) The receipt by the County of any statement pursuant to subsection (b) above or any payment by Borrower or acceptance by the County of any Combined County Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.5 below.

#### Section 2.11 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Combined County Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Notes will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Notes, or impairs the right of County to assert the unpaid principal amount of the Notes as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Notes. Except as hereafter set forth, nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the Loan Documents including but not limited to Sections 3.9, 4.6, and 7.4 of this Agreement, Sections 2.1(d) and 4.7(b)(vi) of the Idaho Apartments HOPWA and County Regulatory Agreement, and Section 2.1(c) of the Church Lane County Regulatory Agreement, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

### ARTICLE 3 REHABILITATION OF THE DEVELOPMENT

#### Section 3.1 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the commencement of rehabilitation of the Development no later than December 31, 2017, or such later date that the County approves in writing.

Section 3.2 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development to occur no later than January 15, 2018, or such later date that the County approves in writing, but in no event later than 1 year from date of this Agreement. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of rehabilitation of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.3 Completion of Construction.

Borrower shall diligently prosecute rehabilitation of the Development to completion, and shall cause the rehabilitation of the Development to be completed no later than November 1, 2019, or such later date that the County approves in writing.

Section 3.4 Pursuant to Plans and Laws.

Borrower shall cause all work performed in connection with the Development to be performed in compliance with:

- (a) all applicable laws, codes (including building codes and codes applicable to mitigation of disasters such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and
- (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the County for the procurement and maintenance thereof.

Section 3.5 Progress Reports.

Until such time as Borrower has received a certificate of occupancy (or functional equivalent) from El Cerrito, Richmond, and San Pablo for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the rehabilitation of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.10 below.

Section 3.6 Construction Responsibilities.

- (a) Borrower is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the rehabilitation of the Development takes place in accordance with this Agreement.
- (b) Borrower is solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers,

consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and may not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or rehabilitation of the Development.

Section 3.7 Mechanics Liens, Stop Notices, and Notices of Completion.

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

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

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

Section 3.8 Inspections.

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

Section 3.9 Relocation.

If and to the extent that acquisition and development of the Property will result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24, and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.) with respect to preparation of a relocation

plan, relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Borrower shall indemnify, defend and hold harmless, (with counsel reasonably acceptable to the County), the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower, or the County) to satisfy relocation obligations related to the acquisition and development of the Property. This obligation to indemnify survives termination of this Agreement.

### Section 3.10 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the County for approval within five (5) days after the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the County will be required to amend the Approved Development Budget.

### Section 3.11 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). The total of Developer Fee paid, whether paid up-front out of development sources or on a deferred basis out of Annual Operating Expenses, is not to exceed Two Million Five Hundred Fifty-Six Thousand Seven Hundred Eleven Dollars (\$2,556,711), provided that Borrower's general partner is required to make a capital contribution of at least One Million Seventeen Thousand Two Hundred Eleven Dollars (\$1,017,211) to the Partnership prior to or at the date the Bank Loan converts to the Permanent Loan. The amount of Developer Fee payable to the Developer out of development sources shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

### Section 3.12 Partnership/Asset Fee.

During the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Thirty-Two Thousand Dollars (\$32,000) per year. After the expiration of the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Twenty-Five Thousand Dollars (\$25,000) per year. The Partnership/Asset Fee may accrue for a period not to exceed three (3) fiscal years following the year during which they are earned.



## ARTICLE 4 LOAN REQUIREMENTS

### Section 4.1 Reserve Accounts.

(a) Replacement Reserve Account. Borrower shall establish and maintain an account that is available for capital expenditures for repairs and replacement necessary to maintain the Development in the condition required by the Loan Documents (the "Replacement Reserve Account"). Borrower shall make annual deposits to the Replacement Reserve Account and replenish the Replacement Reserve Account in the amounts required in the Partnership Agreement and/or the documents evidencing the Permanent Loan, whichever is greater. In no event shall the annual amount deposited in the Replacement Reserve Account exceed Six Hundred Dollars (\$600) per unit, increasing by the applicable consumer price index every five (5) years, or such greater amount required in connection with the Partnership Agreement or any permanent financing, and approved by the County.

(b) Operating Reserve Account. Borrower shall establish and maintain an account that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) (the "Operating Reserve Account"). Borrower shall capitalize the Operating Reserve Account in the amount required by TCAC (currently three months of Annual Operating Expenses); provided, however that if the Partnership Agreement or the documents evidencing the Permanent Loan require the Operating Reserve Account to be capitalized and replenished in an amount greater than the TCAC requirement, Borrower shall capitalize and replenish the Operating Reserve Account as required by the Partnership Agreement or the documents evidencing the Permanent Loan, as applicable, for as long as the Partnership Agreement or the Permanent Loan, as applicable, is outstanding. In no event may the amount held in the Operating Reserve Account exceed six (6) months gross rent from the Development (as such rent may vary from time to time).

### Section 4.2 Financial Accountings and Post-Completion Audits.

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

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

### Section 4.3 Approval of Annual Operating Budget.

At or prior to the beginning of each year of the Term, Borrower shall provide to the County an annual budget for the operation of the Development. The County may request additional information to assist the County in evaluating the financial viability of the

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

Section 4.4 Information.

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

Section 4.5 County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which is to include information on all of Borrower's activities and not just those pertaining to the Development.

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

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

Section 4.6 Hazardous Materials.

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

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership,

occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

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

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.7, and Section 5.1(l). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

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

such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

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

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

#### Section 4.7 Maintenance; Damage and Destruction.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition, and in accordance with the Regulatory Agreements.

(b) Subject to the requirements of senior lenders, and if economically feasible in the County's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense,

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

#### Section 4.8 Fees and Taxes.

Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Borrower shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Section 214(g) without the prior written consent of the County.

#### Section 4.9 Notice of Litigation.

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

Section 4.10 Operation of Development as Affordable Housing.

Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as an affordable housing development consistent with: (1) the Regulatory Agreements; and (2) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the Restructured El Cerrito Loan, and Low Income Housing Tax Credits provided by TCAC, and rental subsidies provided to the Development.

Section 4.11 Nondiscrimination.

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

(b) Nothing in this Section prohibits Borrower from requiring County-Assisted Units in the Development to be available to and occupied by eligible households in accordance with the Regulatory Agreements.

Section 4.12 Transfer.

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

(b) Except as otherwise permitted in this Section 4.12, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Combined County Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County hereby approves the admission of the Investor Limited Partner and the Special Limited Partner to Borrower as limited partners. The County hereby approves future Transfers of the limited partner interests of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner and Special Limited Partner

capital contributions provided for in the Partnership Agreement; and (ii) in subsequent Transfers, the Investor Limited Partner, the Special Limited Partner, or an affiliate thereof as applicable, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The County hereby approves a Transfer of the Property from Borrower to RCD, or a non-profit affiliate of RCD, and an assumption of the Combined County Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the transferee expressly assumes the obligations of Borrower under the Loan Documents, utilizing a form of assignment and assumption agreement provided by the County.

(e) The County hereby approves the purchase of the Investor Limited Partner interest and Special Limited Partner interest by RCD, or a non-profit affiliate of RCD at or prior to the end of the Fifteen Year Compliance Period, provided that such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, that is selected by the Investor Limited Partner and approved by the County, and (ii) the Investor Limited Partner, the Special Limited Partner, or an affiliate thereof as applicable, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

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

#### Section 4.13 Insurance Requirements.

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

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

(ii) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations (which limits may be met through excess/umbrella coverage).

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

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

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

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

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

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

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

Section 4.14 Covenants Regarding Approved Financing and Partnership Agreement.

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

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

(c) Borrower may not amend, modify, supplement, cancel or terminate the



Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County except for amendments solely to effectuate Transfers permitted under Section 4.12 above. Borrower shall provide the County copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of Approved Financing.

(d) Borrower may not incur any indebtedness of any kind (other than Approved Financing or unsecured loans from a partner of Borrower to Borrower pursuant to the terms of the Partnership Agreement), or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Combined County Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.9 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered an Event of Default.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

### Section 5.1 Representations and Warranties.

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

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

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

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

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

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

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

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

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 2.7(h) above, or approved in writing by the County.

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

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

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material

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

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

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

Any one or more of the following constitutes an "Event of Default" by Borrower under this Agreement:

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

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

(c) Failure to Submit Plans. If Borrower fails to submit a Marketing Plan, Tenant Selection Plan, or Social Services Plan that is approved by the County in accordance with the Regulatory Agreements.

(d) Breach of Covenants. If Borrower fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement (other than as set forth in Section 6.1(a) through Section 6.1(c), and Section 6.1(e) through Section 6.1(m)), or in any of the other Loan Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Borrower.

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

(f) Insolvency. If a court having jurisdiction makes or enters any decree or

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

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

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

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

(j) Condemnation. If there is a condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development other than by the County.

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 4.12.

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

(m) Applicability to General Partner. The occurrence of any of the events set forth in Section 6.1(f) through Section 6.1(h) in relation to Borrower's managing general partner, unless the removal and replacement of Borrower's managing general partner in accordance with Section 4.12(f) within the time frame set forth in Section 6.5 cures such a default.

## Section 6.2 Remedies.

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

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

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

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

## Section 6.3 Right of Contest.

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

## Section 6.4 Remedies Cumulative.

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

Section 6.5 Notice and Cure Rights of Limited Partner.

The County shall provide the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County ("Permitted Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at the address set forth in Section 7.9, provided, the County shall have no liability to the Permitted Limited Partner for its failure to do so. The Permitted Limited Partner has the right, but not the obligation, to cure any default of Borrower set forth in such notice, during the applicable cure period described in the Loan Documents, and the County will accept tender of such cure as if delivered by Borrower. If the Permitted Limited Partner is unable to cure a default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Default, the cure period will be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than sixty (60) days after the date of receipt by the Permitted Limited Partner of written notice of the default.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

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

Section 7.2 No Claims.

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

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing

by the Parties. The County Director, Department of Conservation and Development is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any discretionary change in the amount or terms of this Agreement is approved by the County's Board of Supervisors.

Section 7.4 Indemnification.

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

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

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

Section 7.6 Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement, provided, however the Investor Limited Partner is intended to be a direct beneficiary of the provisions set forth in Sections 4.12(c), 4.12(f), and 6.5.

Section 7.7 Discretion Retained By County.

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

Section 7.8 Conflict of Interest.

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

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the

County.

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

Section 7.9 Notices, Demands and Communications.

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

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Deputy Director

Borrower: San Pablo Preservation, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, California 94704  
Attention: Executive Director

Investor Limited  
Partner: RSEP Holding, LLC  
c/o Red Stone Partners, LLC  
200 Public Square, Suite 2050  
Cleveland, OH 44114  
Attn: Managing Director and General Counsel

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

Section 7.10 Applicable Law.

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



Section 7.11 Parties Bound.

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

Section 7.12 Attorneys' Fees.

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

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 County Approval.

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

Section 7.16 Waivers.

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

be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

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

Section 7.18 Entire Understanding of the Parties.

The Loan Documents constitute the entire agreement of the parties with respect to the Combined County Loan.

Section 7.19 Multiple Originals; Counterpart.

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

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The parties are entering into this Agreement as of the last date set forth below.

**COUNTY:**

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

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and  
Development

APPROVED AS TO FORM:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

SAN PABLO PRESERVATION, L.P., a California  
limited partnership

By: RCD GP LLC, a California limited liability  
company, its general partner

By: Resources for Community  
Development, a California nonprofit  
public benefit corporation, its sole  
member/manager

By: \_\_\_\_\_  
Daniel Sawislak, Executive Director

EXHIBIT A-1

LEGAL DESCRIPTION OF THE CHRUCH LANE PROPERTY

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

EXHIBIT A-2

LEGAL DESCRIPTION OF THE IDAHO APARTMENTS PROPERTY

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

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

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DEVELOPMENT LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

SAN PABLO PRESERVATION, L.P.

CHURCH LANE AND IDAHO APARTMENTS

dated December 1, 2017