

HOME AND HOPWA LOAN AGREEMENT
St. Paul's Commons

This HOME and HOPWA Loan Agreement (the "Agreement") is dated March 1, 2018, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and SP Commons, L.P., a California limited partnership ("Borrower").

RECITALS

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

B. The County has received Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92 (the "HOME Regulations").

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

D. St. Paul's Episcopal Church in Walnut Creek, California ("St. Paul's") is the owner of that certain real property located at 1860 Trinity Avenue in the City of Walnut Creek, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Concurrently herewith Borrower is entering into the Ground Lease agreement with St. Paul's, pursuant to which Borrower will acquire a leasehold interest in the Property from St. Paul's for a period of seventy-seven years (the "Leasehold Interest"). Borrower intends to demolish the existing improvements on the Property and construct forty-five (45) multifamily housing units on the Property for rental to extremely low, very low and low income households, including one (1) manager's unit, and attendant site improvements (the "Housing Improvements"). The Property will also be improved with a social service facility that will be leased back to St. Paul's and will house a homeless day shelter and service program (the "Service Facility Improvements"). The Housing Improvements and the Service Facility Improvements are collectively, the "Improvements." Borrower's Leasehold Interest and Borrower's fee interest in the Improvements, are collectively, the "Development."

E. Borrower desires to borrow from the County Two Million Six Hundred Forty-Two Thousand Dollars (\$2,642,000) of HOME Funds (the "HOME Loan"), and Two Hundred Thirty-Two Thousand Six Hundred Eighty-One Dollars (\$232,681) of HOPWA Funds (the "HOPWA Loan") for a total loan amount of Two Million Eight Hundred Seventy-Four Thousand Six Hundred Eighty-One Dollars (\$2,874,681) (the "Loan").

F. The Loan is evidenced by the Note, the Regulatory Agreements, and the Intercreditor Agreement, and is secured by the Deed of Trust.

G. The Loan is being made to finance predevelopment and construction costs of the Housing Improvements. Construction of the Housing Improvements is intended to maintain the supply of affordable rental housing in Contra Costa County. Due to the assistance provided Borrower through the Loan, the County is designating eighteen (18) units as HOME-assisted units (the "HOME-Assisted Units"), and two (2) units of the HOME-Assisted Units as HOPWA-Assisted Units.

H. In accordance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") the City has found the Development categorically exempt pursuant to California Public Resources Code Sections 15192 and 15194.

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

The parties therefore agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Accessibility Requirements" has the meaning set forth in Section 3.9 below.

(b) "Adjusted City Loan" means, to the extent less than the full amount of the City Loan is funded, an amount equal the actual principal amount loaned to Borrower by the City pursuant to the documents between Borrower and the City evidencing the City Loan. If the full amount of the City Loan is funded, and no portion is repaid as a Special City Loan Payment, the Adjusted City Loan is equal to the City Loan.

(c) "Adjusted HOME Loan" means, to the extent less than the full amount of the HOME Loan is funded, an amount equal the actual principal amount loaned to Borrower by the County pursuant to this Agreement. If the full amount of the HOME Loan is funded and no portion is repaid as a Special County Loan Payment, the Adjusted HOME Loan is equal to the HOME Loan.

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

(e) "Agreement" means this HOME and HOPWA Loan Agreement.

(f) "AHP" has the meaning set forth in Section 1.1(j)(iii).

(g) "AHP Loan" has the meaning set forth in Section 1.1(j)(iii).

(h) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:

(i) ground rent payments in the amount set forth in the Ground Lease;

(ii) property taxes and assessments imposed on the Development;

(iii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Housing Improvements) on the Permanent Loan;

(iv) 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;

(v) 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;

(vi) the Partnership/Asset Fee;

(vii) 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;

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

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

(x) maintenance and repair expenses and services;

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

(xii) security services;

(xiii) advertising and marketing;

(xiv) cash deposited into the Replacement Reserve Account in the amount set forth in Section 4.2(a);

(xv) cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 4.2(b) (excluding amounts deposited to initially capitalize the account);

(xvi) payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 3.17;

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

(xviii) 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.

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

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

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

(i) the City Loan;

(ii) a construction loan from Bank of America, N.A., a national banking association (the "Bank") in the approximate amount of _____ Dollars (\$_____) (the "Bank Loan"), which will convert to a permanent loan in the approximate amount of _____ Dollars (\$_____) (the "Permanent Loan");

(iii) loan of affordable housing program funds from _____, administered by the Federal Home Loan Bank of San Francisco in the approximate amount of Four Hundred Forty Thousand Dollars (\$440,000) (the "AHP Loan");

(iv) the Low Income Housing Tax Credit investor equity funds in the approximate amount of _____ Dollars (\$_____) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner; and

(v) the capital contribution from Borrower's general partner in the approximate amount of _____ Dollars (\$_____) (the "GP Capital Contribution").

(l) "Available Net Proceeds" means the result obtained by multiplying the Net Proceeds of Permanent Financing by 0.75.

(m) "Bank" has the meaning set forth in Section 1.1(j)(ii).

(n) "Bank Loan" has the meaning set forth in Section 1.1(j)(ii).

(o) "Bid Package" means the package of documents Borrower's general contractor is required to distribute to potential bidders as part of the process of selecting subcontractors for the Development. The Bid Package is to include the following: (i) an invitation to bid; (ii) copy of the proposed construction contract; (iii) a form of bid guarantee that is reasonably acceptable to the County that guarantees, at a minimum, an amount equal to five percent (5%) of the bid price; and (iv) all Construction Plans.

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

(q) "CEQA" has the meaning set forth in Paragraph H of the Recitals.

(r) "City" means the City of Walnut Creek, California, a municipal corporation.

(s) "City Loan" means the Five Million Five Hundred Thousand Dollar (\$5,500,000) loan from the City to the Borrower.

(t) "Commencement of Construction" has the meaning set forth in Section 3.5.

(u) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Housing Improvements may be legally occupied.

(v) "Construction Plans" means all construction documentation upon which Borrower and Borrower's general contractor rely in constructing all the Improvements (including the residential units, and landscaping, parking, and common areas serving the residential units) and includes, but is not limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").

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

(x) "County-Assisted Units" means the HOME-Assisted Units and the HOPWA Assisted Units.

(y) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing (1) the sum of the Adjusted HOME Loan and the Adjusted HOPWA Loan, by (2) the sum of the Adjusted HOME Loan, the Adjusted HOPWA Loan, and the Adjusted City Loan.

(z) "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 Loan, to be recorded against the Development.

(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 Development to secure repayment of the 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 3.17.

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

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

(ff) "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.

(gg) "Final Cost Certification" has the meaning set forth in Section 4.3.

(hh) "Final Development Cost" means the total of the cost of acquisition of the Leasehold Interest and construction of the Improvements as shown on the Final Cost Certification.

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

(jj) "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.

(kk) "Ground Lease" means the Ground Lease Agreement between Borrower and St. Paul's dated _____, 2018, pursuant to which Borrower is leasing the Property from St. Paul's for a period of seventy-seven (77) years.

(ll) "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.

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

(nn) "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.

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

(pp) "HOME-Assisted Units" has the meaning set forth in Paragraph G of the Recitals.

(qq) "HOME Eligible Household" means a household qualified to occupy a HOME-Assisted Unit pursuant to Section 2.1 of the HOME/HOPWA Regulatory Agreement.

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

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

(tt) "HOME Regulations" has the meaning set forth in Paragraph B of the Recitals.

(uu) "HOME/HOPWA Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing HUD requirements applicable to the Loan, to be recorded against the Development.

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

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

(xx) "HOPWA Funds" has the meaning set forth in Paragraph C of the Recitals.

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

(zz) "HOPWA-Assisted Unit(s)" means a unit in the Development restricted to occupancy by a HOPWA-Eligible Household, which restrictions are more fully set forth in in the HOME/HOPWA Regulatory Agreement.

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

(bbb) "Housing Improvements" has the meaning set forth in Paragraph D of the Recitals.

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

(ddd) "Improvements" has the meaning set forth in Paragraph D of the Recitals.

(eee) "Intercreditor Agreement" means that certain intercreditor agreement of even date herewith entered into by and among the City, the County, and Borrower related to the Loan and the City Loan, to be recorded against the Development.

(fff) "Investor Limited Partner" means collectively, Bank of America, N.A., a national banking association, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, and their successors and assigns.

(ggg) "Leasehold Interest" has the meaning set forth in Paragraph D of the Recitals.

(hhh) "Lenders' Share of Residual Receipts" means seventy-five percent (75%) of Residual Receipts.

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

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

(kkk) "NEPA" has the meaning set forth in Paragraph I of the Recitals.

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

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

(nnn) "Operating Reserve Account" has the meaning set forth in Section 4.2(b).

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

(ppp) "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 Borrower, in the amounts approved by the County as set forth in Section 3.19.

(qqq) "Permanent Conversion" means the date the Bank Loan converts to the Permanent Loan.

(rrr) "Permanent Financing" means the sum of the following amounts: (i) the Permanent Loan; (ii) the Adjusted HOME Loan; (iii) the Adjusted HOPWA Loan; (iv) the Adjusted City Loan; (v) the Tax Credit Investor Equity; (vi) the GP Capital Contribution; and (vii) the AHP Funds.

(sss) "Permanent Loan" has the meaning set forth in Section 1.1(j)(ii).

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

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

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

(www) "Regulatory Agreements" means the County Regulatory Agreement and

the HOME/HOPWA Regulatory Agreement.

(xxx) "Rental Shortfall Due Date" has the meaning set forth in Section 2.8(c).

(yyy) "Rental Shortfall Payment" has the meaning set forth in Section 2.8(c).

(zzz) "Replacement Reserve Account" has the meaning set forth in Section 4.2(a).

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

(bbbb) "Retention Amount" means Fifty Thousand Dollars (\$50,000) of the HOME Loan, the disbursement of which is described in Section 2.7.

(cccc) "Service Facility Improvements" has the meaning set forth in Paragraph D of the Recitals.

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

(eeee) "Special City Loan Payment" has the meaning set forth in the Intercreditor Agreement.

(ffff) "Special County Loan Payment" has the meaning in Section 2.8(b).

(gggg) "Special County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the County Loan by the sum of the County Loan and the City Loan.

(hhhh) "St. Paul's" has the meaning set forth in Paragraph D of the Recitals.

(iiii) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.

(jjjj) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(j)(vi).

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

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

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

(nnnn) "Transfer" has the meaning set forth in Section 4.13 below.

Section 1.2 Exhibits

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

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

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan.

Upon satisfaction of the conditions set forth in Section 2.6 and Section 2.7 of this Agreement, the County shall lend to Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

Section 2.2 Interest.

(a) HOME Loan. Subject to the provisions of subsection (c) below, simple interest will accrue on the outstanding principal balance of the HOME Loan at a per annum rate of interest equal to three percent (3%), commencing on the date of disbursement.

(b) HOPWA Loan. Subject to the provisions of subsection (c) below, no interest will accrue on the outstanding principal balance of the HOPWA Loan.

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

Section 2.3 Use of Loan Funds.

(a) HOME Loan. Borrower shall use the HOME Loan for construction costs, in amounts consistent with the Approved Development Budget. Use of the HOME Loan for reimbursement of costs incurred prior to the date of this Agreement is subject to Section 92.206(d)(1) of the HOME Regulations.

(b) HOPWA Loan. Borrower shall use the HOPWA Loan for soft costs, closing costs, and construction costs, in amounts consistent with the Approved Development Budget.

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

Section 2.4 Security.

In consideration of the Loan, Borrower shall (i) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a

lien against the Development, and (ii) execute the Regulatory Agreements, and the Intercreditor Agreement, and cause or permit them to be recorded against the Development.

Section 2.5 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, Permanent Loan, or any loan obtained by Borrower to refinance the Bank Loan or Permanent 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 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 Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County.

(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 2.6 Conditions Precedent to Disbursement of Loan Funds for Construction.

Until the conditions set forth in Section 2.7 have been met, the disbursements made pursuant to this Agreement may not exceed Two Million Eight Hundred Twenty-Four Thousand Six Hundred Eighty-One Dollars (\$2,824,681). The County is not obligated to disburse any portion of the Loan, 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) The County has approved the Ground Lease;

(c) There exists no default nor any act, failure, omission or condition that would constitute default under the Ground Lease;

(d) Borrower holds title to the Leasehold Interest or is acquiring title to the Leasehold Interest simultaneously with the disbursement of the Loan proceeds;

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

(f) 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;

(g) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.14 below;

(h) 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;

(i) The Deed of Trust, the Regulatory Agreements, and the Intercreditor Agreement, have been recorded against the Leasehold Interest in the Office of the Recorder of the County of Contra Costa;

(j) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such

exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Leasehold Interest in the Office of the Recorder of the County of Contra Costa;

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

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

(m) Borrower has obtained all permits and approvals necessary for the construction of the Improvements;

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

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

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

(q) Borrower has closed the loans and obtained the equity financings that comprise the Approved Financing described in Section 1.1(j)(i)-(v), and has already received, or is eligible to receive, the funds;

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

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

(t) Borrower has provided the County a certification from the Development architect or qualified accessibility specialist that the construction plans are in conformance with the Accessibility Requirements;

(u) 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 Housing Improvements by the Housing Authority;

(v) 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 eighteen (18) units in the Housing Improvements by the Housing Authority; and

(w) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.6(a) continues to be satisfied; (ii) certification that the proposed uses of funds is consistent with the Approved Development Budget; (iii) the amount of funds needed; and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with Improvements, the written request must be accompanied by: (1) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Development and make an independent evaluation); and (2) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

Section 2.7 Conditions Precedent to Disbursement of Retention.

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

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

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

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

(d) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.14 below;

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

(f) The County has received from Borrower a Marketing Plan, Tenant Selection Plan, and Social Services Plan as defined in the HOME/HOPWA Regulatory Agreement;

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

(h) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 requirements as set forth in Section 4.7(b)(xii) of the HOME/HOPWA Regulatory Agreement, and MBE/WBE requirements;

(i) If Borrower was required to comply with relocation requirements as set forth in Section 4.7(b)(vi) of the HOME/HOPWA Regulatory Agreement, the County has received from Borrower evidence of compliance with all applicable relocation requirements;

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

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

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

(m) The County has received from Borrower 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 Housing Improvements by the Housing Authority;

(n) The County has received from Borrower 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 eighteen (18) units in the Housing Improvements by the Housing Authority; and

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

Section 2.8 Repayment Schedule.

(a) Annual Payments of Loan. Commencing on June 1, 2020 and on June 1 of each year thereafter during the Term, Borrower shall make a Loan payment in an amount equal to the County Loan Prorata Percentage of the Lenders' Share 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) Special Repayments of HOME Loan from Net Proceeds of Permanent Financing. No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County as a special

repayment of the HOME Loan, an amount equal to the result obtained by multiplying the Special County Loan Prorata Percentage by the Available Net Proceeds (the "Special County Loan Payment"). No later than one hundred eighty (180) days following completion of construction of the Improvements, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification as defined Section 4.3 below. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained.

(c) Special Repayment of HOME Loan for Failure to Lease. If on or before the Rental Shortfall Due Date, Borrower fails to cause each of the HOME-Assisted Units to be rented to and occupied by a HOME Eligible Household in accordance with Section 2.1(b) of the HOME/HOPWA Regulatory Agreement, Borrower shall pay the County the Rental Shortfall Payment, plus accrued interest, on the Rental Shortfall Due Date.

(i) The "Rental Shortfall Due Date" is the date that occurs eighteen (18) months after the Completion Date.

(ii) The "Rental Shortfall Payment" is an amount equal to the result obtained by multiplying (1) the number of HOME-Assisted Units that have not been rented to and occupied by a HOME Eligible Household on or before the Rental Shortfall Due Date, by (2) a fraction, the numerator of which is the then-outstanding principal balance on the HOME Loan and the denominator of which is the number of HOME-Assisted Units.

(iii) Interest on the Rental Shortfall Payment will accrue in accordance with Section 2.2(a) through the Rental Shortfall Due Date. If the Rental Shortfall Payment is not paid on or before the Rental Shortfall Due Date, interest on the Rental Shortfall Payment will accrue at the Default Rate beginning on the day after the Rental Shortfall Due Date and continuing until the Rental Shortfall Payment is paid in full with interest.

(d) Payment in Full of Loan. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 4.13; (ii) an Event of Default; and (iii) the expiration of the Term.

(e) Prepayment. Borrower may prepay the 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 2.9 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 the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(iii) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Lenders' Share 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 Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.6 below.

Section 2.10 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the Loan Documents including but not limited to Sections 3.8, 3.9, 3.10, 4.7, and 7.4 of this Agreement and Sections 2.1(d) and 4.7(b)(vi) of the HOME/HOPWA 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 Development 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 Development.

ARTICLE 3 CONSTRUCTION OF THE IMPROVEMENTS

Section 3.1 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the construction of the Improvements no later than March 31, 2018, or such later date that the County approves in writing.

Section 3.2 Bid Package.

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

Section 3.3 Construction Contract.

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

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

Section 3.4 Construction Bonds.

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

Section 3.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Improvements to occur no later than April 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 construction of the Improvements in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.6 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Improvements to completion, and shall cause the construction of the Improvements to be completed no later than July 1, 2019, or such later date that the County approves in writing.

(b) Borrower shall give notice to the County upon completion of construction of the Improvements. Upon receipt of such notice the County will perform an inspection of the Improvements to determine if the Improvements were constructed in accordance with the HOME Regulations, including the property standards set forth in 24 C.F.R. 92.251. If the County determines the Improvements were not constructed in accordance with the HOME Regulations, the County will provide Borrower with a written report of the deficiencies. Borrower shall correct such deficiencies within the timeframe set forth in the notice provided to Borrower by the County. The Development may not be occupied until such deficiencies have been corrected to the satisfaction of the County.

Section 3.7 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Improvements in conformance with (i) the plans and specifications approved by the City's Building Inspection Department, and (ii) the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Improvements may be performed: (i) any change in the work the cost of which exceeds Fifty Thousand Dollars (\$50,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds One Hundred Thousand Dollars (\$100,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Improvements as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its

surety from any surety bond.

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

(i) all applicable laws, 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;

(ii) the HOME Regulations including the property standards set out in 24 C.F.R. 92.251 as implemented by Section 5.6 of the HOME/HOPWA Regulatory Agreement, and 24 C.F.R. Section 574.310;

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

(iv) 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 3.8 Prevailing Wages.

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

(b) State Prevailing Wages.

(i) To the extent required by applicable law Borrower shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages in the construction of the Improvements as those wages are determined pursuant to California Labor Code Section 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations

of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(4) post at the Development, or shall cause the contractor to post at the Development, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5;

(6) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the construction of the Improvements to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Improvements unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the construction of the Improvements is subject to compliance monitoring and enforcement by the DIR.

(7) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(8) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(9) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Improvements or any other work undertaken or in connection with the Development. The

requirements in this Section survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.9 Accessibility.

(a) Borrower shall cause the Development to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements: (i) a minimum of three (3) units must be construction to be fully accessible to households with a mobility impaired member and, (ii) an additional one (1) unit must be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development.

(c) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to rehabilitate the Development in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.10 Relocation.

If and to the extent that acquisition of the Leasehold Interest and construction of the Improvements will result in the permanent or temporary displacement of tenants, then Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 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 of the Leasehold Interest. This obligation to indemnify shall survive termination of this Agreement.

Section 3.11 Equal Opportunity.

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

Section 3.12 Minority and Women-Owned Contractors.

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

Section 3.13 Progress Reports.

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

Section 3.14 Construction Responsibilities.

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

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

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

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

with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

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

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Development for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Development. 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.

Section 3.16 Inspections.

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

Section 3.17 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit 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 3.18 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). The County approves a total Developer Fee whether paid up-front out of development sources or on a deferred basis out of Annual Operating Expenses, in an amount not to exceed One Million Nine Hundred Thousand Dollars (\$1,900,000), provided that (i) Borrower's general partner is required to make a capital contribution of at least One Hundred Fifty-Seven Thousand Nine Hundred Dollars (\$157,900) prior to or at Permanent Conversion, and (ii) amount of Developer Fee payable to the Developer out of development sources is not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

Section 3.19 Partnership/Asset Fee.

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

Section 3.20 NEPA Mitigation Requirements.

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

ARTICLE 4 LOAN REQUIREMENTS

Section 4.1 Match Requirement.

The Borrower shall ensure that the Loan is matched with a minimum of Six Hundred Sixty Thousand Six Hundred Dollars (\$660,600) in other, non-federal sources, pursuant to and eligible under applicable HOME Regulations.

Section 4.2 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 4.3 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Improvements, 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 4.4 Approval of Annual Operating Budget.

Thirty (30) days 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 4.5 Information.

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

Section 4.6 County Audits.

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

(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 4.7 Hazardous Materials.

(a) Borrower shall keep and maintain the Development (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Development 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 Development or transportation to or from the Development 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 Development that could cause the Development or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Development 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 Development; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Development relating to Hazardous Materials (whether on the Development 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 Development 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 Development, (2) loss or restriction of use of rentable space on the

Development, (3) adverse effect on the marketing of any rental space on the Development, 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 Development 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 Development, 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 Development 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 Development 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 Development 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 Development 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 Development; 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 Development 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 Development 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 4.8 Maintenance; Damage and Destruction.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development 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 Loan, subject to the rights of the senior lenders, if any.

Section 4.9 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 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 Development. 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 Development.

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 Development under any provision of law (except California Revenue and Taxation Section 214(g)) without the prior written consent of the County.

Section 4.10 Notice of Litigation.

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

Section 4.11 Operation of Development as Affordable Housing.

(a) 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) HUD's requirements for use of HOPWA Funds and HOME Funds; (2) the Regulatory Agreements; and (3) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the City Loan, and Low Income Housing Tax Credits provided by TCAC and rental subsidies provided to the Development.

Section 4.12 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 Development, 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 Development. 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 income eligible households in accordance with the Regulatory Agreements, or from requiring the HOPWA-Assisted Units in the Development to be available to and occupied by HOPWA Eligible Households.

Section 4.13 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 4.13, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

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

(d) The County hereby approves a Transfer of the Development from Borrower to RCD, or a non-profit affiliate of RCD, and an assumption of the Loan by such transferee at 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 the Borrower under the Loan Documents, utilizing a form of assignment and assumption agreement provided by the County.

(e) The County hereby approves the Transfer of the Investor Limited Partner interest to RCD, or a non-profit affiliate of RCD at 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 or an affiliate thereof, but only for a period not to exceed one hundred twenty (120) 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 4.14 Insurance Requirements.

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

(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 Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for 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; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 4.15 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 4.13 above.

(d) 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.

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

(f) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the 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.

Section 4.16 Covenants Regarding the Ground Lease.

Borrower hereby covenants and agrees, as to the Ground Lease:

(a) To promptly pay, when due and payable, any rent, taxes and all other sums and charges mentioned in and made payable pursuant to the Ground Lease.

(b) To promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Borrower as lessee under the Ground Lease, within the period provided in the Ground Lease, or such lesser periods as are provided in the Loan Documents, and to do all things necessary to preserve and to keep unimpaired its rights

under the Ground Lease. Borrower specifically acknowledges the County's right, while any default by Borrower under any Ground Lease remains uncured, to perform the defaulted obligations and take all other actions which the County reasonably deems necessary to protect its interests with respect thereto.

(c) To preserve at all times the full term and enforceability of the Ground Lease, and not to release, forego, alter, amend, cancel, surrender, or materially modify its rights under the Ground Lease, or exercise any rights it may have to voluntarily terminate the Ground Lease, or permit any termination material modification or surrender of the Ground Lease without the County's prior written consent.

(d) To (i) promptly notify the County in writing of the receipt by Borrower of any notice from St Paul's and of any notice noting or claiming any default by Borrower in the performance or observance of any of the terms, covenants or conditions on the part of the Borrower to be performed or observed under the Ground Lease; (ii) promptly notify the County in writing of the receipt by Borrower of any notice from St Paul's to Borrower of termination of the Ground Lease pursuant to the provisions of the Ground Lease; (iii) promptly cause a copy of each such notice received by Borrower from St Paul's to be delivered to the County; provided, however, that no such delivery by Borrower to the County of any such notices shall be deemed to waive, release, or modify any obligation of St Paul's to separately provide such notice to the County pursuant to the terms of the Ground Lease; and (iv) promptly notify the County in writing of any default by St Paul's in the performance or observance of any of the terms, covenants or conditions on the part of St Paul's to be performed or observed.

(e) To, within thirty (30) days after written demand from the County, obtain from St Paul's and deliver to the County a certificate stating that the Ground Lease is in full force and effect, is unmodified, that no notice of termination thereon has been served on Borrower, stating that no default or event which with notice or lapse of time (or both) would become a default is existing under the Ground Lease (or specifying the nature of any defaults or events which with notice or lapse of time, or both, would become a default under the Ground Lease), stating the date to which net rent has been paid, and containing such other statements and representations as may be requested by the County.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

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

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

(b) 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 construction of the Improvements 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 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 title to the Leasehold Estate and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved in writing by the County.

(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 Leasehold Interest and the construction of the Improvements 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 Development 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 Development; (ii) neither the Development nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Development nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

(m) Compliance with the Ground Lease. Borrower hereby represents and warrants that: (i) the Ground Lease is unmodified and is in full force and effect; (ii) all rents and other charges to be paid by Borrower as lessee under the Ground Lease are current; (iii) Borrower is not in default under any of the provisions of the Ground Lease and no circumstances exist which would constitute a default by Borrower under the Ground Lease or would otherwise permit St Paul's to cancel, terminate or otherwise limit the Ground Lease in any manner; (iv) Borrower is not aware of any default by St Paul's under the Ground Lease or the existence of circumstances which would constitute a default by St Paul's under the Ground Lease; (v) Borrower's interest in the Ground Lease is not subject to any liens or encumbrances except as previously disclosed to the County in writing; and (vi) Borrower owns and holds the Ground Lease and the entire leasehold estate created by the Ground Lease and has the right under the Ground Lease or has received all appropriate consents required in order for Borrower to execute the Loan Documents.

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 Improvements 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 HOME/HOPWA Regulatory Agreement.

(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 Note.

(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 Note.

(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 the Development. If any claim of lien (other than liens allowed pursuant to the Loan Documents 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 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 Development other than by the County.

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 4.13.

(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) Ground Lease Default. If Borrower fails to comply with any term or condition of the Ground Lease or a default or an event of default occurs under the Ground Lease (subject to any notice and cure rights contained in the Ground Lease);

(n) Ground Lease Termination. If any event or circumstance occurs which gives St Paul's the right to terminate the Ground Lease.

(o) 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 4.13(f), within the time frame set forth in Section 6.1(d) cures such a default.

Section 6.2 Remedies.

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

Section 6.3 Acceleration of Note. The County may cause all indebtedness of Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to

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

Section 6.4 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.

Section 6.5 Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand 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 6.6 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 6.7 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 6.8 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 Leasehold Interest, the construction of the Improvements, or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction of the Improvements 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 Leasehold Interest, construction of the Improvements, and the development, 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 4.13(c), 4.13(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 Improvements.

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: Assistant Deputy Director

Borrower: SP Commons, L.P.
c/o RCD GP III, LLC
2220 Oxford Street
Berkeley, CA 94720
Attention: Executive Director

Investor Limited
Partner: Bank of America, N.A.
Community Development Banking Group
MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Management

With a copy to:

Buchalter, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
Attention: Michael A. Williamson, Esq.
Re: B0965-0363 (St. Paul Commons)

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 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 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 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.

***[Remainder of Page Left Intentionally Blank]
[Signatures on Following Page]***

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

Date: March ____, 2018

APPROVED AS TO FORM:

SHARON L. ANDERSON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

BORROWER:

SP Commons, L.P., a California limited partnership

By: RCD GP III 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

Date: March ____, 2018

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

EXHIBIT C

NEPA MITIGATION REQUIREMENTS

Air Quality			
AQ1. Consistent with the BAAQMD's preferred approach, the project developer shall ensure that the following measures are included in construction contracts and specifications to control fugitive dust emissions:	City of Walnut Creek, Building Division	Contra Costa County – Dept. of Conservation & Development	Construction
<ul style="list-style-type: none"> a. Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives; b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard. c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites; d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging area at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets; f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas; g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.). h. Limit traffic speeds on unpaved roads to 15 mph; i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and j. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts. 			
AQ1. The project developer shall ensure that emissions from construction equipment exhaust, and from workers commuting to the site, are reduced from implementation			

of the following measures:

- a. Store construction tools on-site in secure facilities to encourage commuting by transit;
- b. Use alternative fueled construction equipment to the fullest extent possible;
- c. Minimize idling time (e.g., 5-minute maximum);
- d. Maintain properly tuned equipment according to equipment manufacturer's guidelines; and
- e. Limit hours of operation of heavy duty equipment to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday, and between 8:00 A.M. and 5:00 P.M. on Saturday, as specified in Walnut Creek Municipal Code Section 4-6.203.

Contamination and Toxic Substances

CT1. Proper handling and disposal of asbestos and lead-based paint is required during demolition – see NESHAP Asbestos Survey and Lead Paint Screen by AEI Consultants and dated April 11, 2016.	City of Walnut Creek, Building Division	Contra Costa County – Dept. of Conservation & Development	Construction
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Endangered Species

ES1. If construction commences anytime during the nesting/breeding season of native bird species (typically February through August), a qualified biologist must conduct a preconstruction survey of the project vicinity for nesting/breeding birds at least 30 days prior to the start of construction activities. The intent of the survey is to determine if active raptor nests or other species protected by the Migratory Bird Treaty Act are present within the construction zone or within 250 feet of construction zone for raptors and 50 feet of the construction zone for other migratory birds. The survey area must include all trees and shrubs within zones that have the potential to support nesting birds.	City of Walnut Creek, Building Division	Contra Costa County – Dept. of Conservation & Development	Pre-Construction
ES2. If active nests are found in the area that could be directly affected or are within 250 feet of construction for raptors and 50 feet for other migratory birds, a no-			

disturbance buffer zone must be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. Once the young have fledged, tree removal and other construction activities may commence.

Geotechnical

G1. Follow all recommendations in the *Geotechnical Engineering Services Report* prepared for the project by Professional Service Industries, Inc. dated May 26, 2016.

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Dept. of Conservation
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Historic Preservation

CR1. If during project construction activities previously unidentified archeological resources are discovered, all project activities in the immediate vicinity of the discovery would be halted and the procedures of 36 CFR Part 800.13(b) and (c) would be followed. [Paragraph I.A. Inadvertent Archeological Resource Discovery]

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Dept. of Conservation
& Development

Construction

CR2. Upon discovery of Native American human remains and associated or unassociated funerary objects, the City of Walnut Creek shall treat them in accordance with provisions of California Public Resources Code Section 5097.94, 5097.98, and 5097.99 and the California Health and Safety Code Section 7050.5 or as provided in federal implementing regulations found in 36 CFR 800.13(b)(2). [Paragraph I.B. Treatment of Native American human remains and cultural properties]

CR3. For any archaeological resources discovered during the excavation and construction phase, all project activities in the immediate vicinity of the discovery would halt. Procedures of 36 CFR Part 800.13(b) and (c); PRC Sections 5097.94, 5097.98 and 5097.99; and the California Health and Safety Code Section 7050.5 would be followed, including calling an archaeologist or paleontologist to evaluate the materials.

CR4. If paleontological resources were found during site excavation and construction, work would be halted until a paleontologist could evaluate the nature and significance of the resources. If significant resources were confirmed, the OHP and the California Department of State Parks would be contacted for further guidance on documentation and preservation. Protocol for the discovery of paleontological resources during construction would be the same as that for archaeological resources: project activities in the immediate vicinity of the discovery would halt, and

procedures of 36 CFR Part 800.13(b) and (c); PRC Sections 5097.94, 5097.98 and 5097.99; and the California Health and Safety Code Section 7050.5 would be followed, including calling an archaeologist or paleontologist to evaluate the materials.

Public Safety – Police Services

PS1. Applicant shall provide the following site security measures at the project as requested by the Walnut Creek Police Department:

City of Walnut
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& Development

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- a. Adequate lighting throughout the complex;
- b. Video surveillance cameras at access points, on the perimeter, any anywhere property is stored;
- c. Controlled access at entry and exit points;
- d. Emergency evacuation plans;
- e. An on-site apartment manager.

PS2. Applicant shall contact the Walnut Creek Police Department contact for this project, Lt. Seam Conley, Special Operations Unit, to partner with them on this project, at their request, to reduce impacts from the project on the neighborhood and Police services in the area.

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Stormwater

SW1. Submit a Stormwater Control Plan to the City of Walnut Creek per Municipal Code 9.16- 105 that meets C.3 requirements for development projects. Implement Best Management Practices (BMPs) and Low Impact Development (LID) measures to ensure post-development impacts to water quality are minimal.

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Water Supply

WS1. The project sponsor shall comply with Assembly Bill 325, “Model Water Efficiency Landscape Ordinance” (Division 2, Title 23, California Code of Regulation, Chapter 2.7, Sections 490 through 495), as a requirement of the provision of potable water to

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the development by EBMUD.

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HOPWA AND HOME LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

SP COMMONS, L.P.

St. Paul's Commons

dated March 1, 2018