

DEVELOPMENT LOAN AGREEMENT  
(Antioch Scattered Site Renovation)

This Development Loan Agreement (the "Agreement") is dated November 1, 2018, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Antioch Recap, L.P., a California limited partnership ("Borrower").

RECITALS

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

B. Borrower is acquiring from Resources for Community Development, a California nonprofit public benefit corporation (the "Terrace Glen Seller" or "RCD") that certain real property located at 35, 45, 101, 103, 105 and 107 W. 20th Street, and 104 and 106 W. 20th Street in the City of Antioch, County of Contra Costa, State of California, as more particularly described in Exhibit A-1 (the "Terrace Glen Property"). The Terrace Glen Property is improved with thirty-two (32) units of affordable housing and attendant site improvements (the "Terrace Glen Improvements").

C. Borrower is acquiring from Pinecrest Affordable Housing L.P., a California limited partnership (the "Pinecrest Seller") that certain real property located at 1945 and 1949 Cavallo Road in the City of Antioch, County of Contra Costa, State of California, as more particularly described in Exhibit A-2 (the "Pinecrest Property"). The Pinecrest Property is improved with twenty-four (24) units of affordable housing and attendant site improvements (the "Pinecrest Improvements").

D. The Terrace Glen Improvements, and the Pinecrest Improvements, are collectively referred to as the "Improvements." The Terrace Glen Property, and the Pinecrest Property, are collectively referred to as the "Property." The Improvements and the Property are collectively referred to as the "Development."

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

F. The County previously provided loans to the Sellers as described in more detail in Section 2.1 below. In support of the rehabilitation of the Improvements and the common scheme of financing, the County has agreed to restructure the Original County Loans and consent to their assignment to Borrower, and provide the New County Loan to Borrower. The New County Loan is more particularly described in Section 2.2 below.

G. The Restructured County Loans and New County Loan are funded with Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"), which must be used in accordance with 24 C.F.R. Part 92 (the "HOME").

Regulations"). The HOME Funds being used for the New County Loan are funds which are set aside for entities that are designated as a Community Housing Development Organization ("CHDO") as defined in 24 C.F.R. 92.2.

H. The sum of the combined Restructured County Loans and New County Loan is Three Million Six Hundred Seventy Thousand Nine Hundred Sixty-Two Dollars (\$3,670,962) (the "Combined County Loan"). The Combined County Loan is evidenced by the Notes, the Regulatory Agreements, and the Intercreditor Agreement, and is secured by the Deed of Trust.

I. Due to the assistance provided Borrower through the Combined County Loan, the County is designating thirty-four (34) units of affordable housing as assisted by the County (the "County-Assisted Units"). The County-Assisted Units are comprised of twenty (20) units at the Terrace Glen Improvements, and fourteen (14) units at the Pinecrest Improvements.

J. Antioch has found the Development exempt from the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") as the rehabilitation of existing improvements, and the County has found the Development exempt from the requirements of CEQA as the rehabilitation of existing improvements.

K. 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) "Agreement" means this Development Loan Agreement.

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

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

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

(iii) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin;

(iv) fees paid to the Issuer with respect to the Bonds;

(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 3.18;

(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.

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

(e) "Antioch" means the City of Antioch, California, a municipal corporation.

(f) "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.

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

(i) the Restructured Antioch Loan;

(ii) County of Contra Costa Multifamily Housing Revenue Bonds (Antioch Scattered Site Renovation) Series 2018A issued by the County of Contra Costa (the "Issuer") in the approximate amount of Ten Million Four Hundred Seventy-Five Thousand Four Hundred Forty-One Dollars (\$10,475,441) (the "Bonds"), that are purchased by the Bank and the sale proceeds of which are loaned to Borrower (the "Bank Loan") which will convert to a permanent loan in the approximate amount of Four Million Six Hundred Eighty Thousand Dollars (\$4,680,000) (the "Permanent Loan");

(iii) the Low Income Housing Tax Credit investor equity funds in the approximate amount of Six Million Eight Hundred Sixty-Six Thousand Eight Hundred Seventy-Six Dollars (\$6,866,876) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(iv) the loan from RCD of Development reserves in the approximate amount of Two Hundred Five Thousand Nine Hundred Dollars (\$205,900) (the "Reserve Loan"); and

(v) the capital contribution from Borrower's general partner in the approximate amount of Five Hundred Forty Thousand Three Hundred Forty-Four Dollars (\$540,344,) (the "GP Capital Contribution").

(h) "Assignment Agreements" means collectively, the Pinecrest Assignment Agreement and the Terrace Glen Assignment Agreement.

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

(j) "Bank" means Well Fargo Bank, N.A., a national banking association, and its successors and assigns.

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

(l) "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.

(m) "Bonds" has the meaning set forth in Section 1.1(g)(ii).

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

(o) "CEQA" has the meaning set forth in Paragraph J of the Recitals.

(p) "CHDO" has the meaning set forth in Paragraph G of the Recitals.

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

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

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

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

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

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

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

(x) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Combined County Loan minus any Special County Loan Repayment by the sum of (1) the Combined County Loan minus any Special County Loan

Repayment, and (2) the Restructured Antioch Loan minus any Special City Loan Repayment.

(y) "County Special Repayment Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Combined County Loan by the sum of (1) the Combined County Loan and (2) the Restructured Antioch Loan.

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

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

(bb) "Developer Fee" has the meaning set forth in Section 3.18.

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

(dd) "Eligible Household" means a household qualified to occupy a HOME-Assisted Unit pursuant to the Terrace Glen HOME Regulatory Agreement and/or the Pinecrest HOME Regulatory Agreement.

(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 and rehabilitation of the Development as shown on the Final Cost Certification.

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

(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) "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.

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

(mm) "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.

(nn) "HOME-Assisted Units" means the HOME-Assisted Units as defined in the Terrace Glen HOME Regulatory Agreement and the HOME-Assisted Units as defined in the Pinecrest HOME Regulatory Agreement.

(oo) "HOME Funds" has the meaning set forth in Paragraph G of the Recitals.

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

(qq) "Housing Authority" means the Housing Authority of Contra Costa

County.

- (rr) "HUD" has the meaning set forth in Paragraph G of the Recitals.
- (ss) "Improvements" has the meaning set forth in Paragraph D of the Recitals.
- (tt) "Intercreditor Agreement" means that certain intercreditor agreement of even date herewith entered into by and among Antioch, the County, and Borrower related to the Restructured Antioch Loan, and the Combined County Loan to be recorded against the property.
- (uu) "Investor Limited Partner" means, RSEP Holding, LLC, a Delaware limited liability company.
- (vv) "Issuer" has the meaning set forth in Section 1.1(g)(ii).
- (ww) "Lenders' Share of Residual Receipts" means seventy-five percent (75%) of Residual Receipts.
- (xx) "Loan Documents" means this Agreement, the Notes, the Regulatory Agreements, the Intercreditor Agreement, and the Deed of Trust.
- (yy) "NEPA" has the meaning set forth in Paragraph K of the Recitals.
- (zz) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.
- (aaa) "New County Loan" has the meaning set forth in Section 2.2(c).
- (bbb) "New Note" has the meaning set forth in Section 2.2(c).
- (ccc) "Notes" means collectively, the New Note, the Restructured Terrace Glen Note, and the Restructured Pinecrest Note.
- (ddd) "Official Records" means the official records of Contra Costa County.
- (eee) "Operating Reserve Account" has the meaning set forth in Section 4.2(b).
- (fff) "Original County Loans" means collectively, the Original Terrace Glen Loan and the Original Pinecrest Loan.
- (ggg) "Original Pinecrest Deed of Trust" has the meaning set forth in Section 2.1(b).
- (hhh) "Original Pinecrest Intercreditor Agreement" has the meaning set forth in Section 2.1(b).
- (iii) "Original Pinecrest Loan" has the meaning set forth in Section 2.1(b).
- (jjj) "Original Pinecrest Loan Agreement" has the meaning set forth in Section



2.1(b).

(kkk) "Original Pinecrest Note" has the meaning set forth in Section 2.1(b).

(lll) "Original Pinecrest Regulatory Agreement" has the meaning set forth in Section 2.1(b).

(mmm) "Original Terrace Glen Borrower" means Terrace Glen Partners, L.P., a California limited partnership.

(nnn) "Original Terrace Glen Deed of Trust" has the meaning set forth in Section 2.1(a).

(ooo) "Original Terrace Glen Loan" has the meaning set forth in Section 2.1(a).

(ppp) "Original Terrace Glen Loan Agreement" has the meaning set forth in Section 2.1(a).

(qqq) "Original Terrace Glen Note" has the meaning set forth in Section 2.1(a).

(rrr) "Original Terrace Glen Regulatory Agreement" has the meaning set forth in Section 2.1(a).

(sss) "Original Terrace Glen Intercreditor Agreement" has the meaning set forth in Section 2.1(a).

(ttt) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership, dated on or about November 1, 2018, that governs the operation and organization of Borrower as a California limited partnership.

(uuu) "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.

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

(www) "Permanent Financing" means the sum of the following amounts: (i) the Permanent Loan; (ii) the Combined County Loan; (iii) the Restructured Antioch Loan; (iv) the Reserve Loan; (v) the Tax Credit Investor Equity; and (vi) the GP Capital Contribution.

(xxx) "Permanent Loan" has the meaning set forth in Section 1.1(g)(ii).

(yyy) "Pinecrest Assignment Agreement" means the Assignment, Assumption and Consent Agreement dated September 30, 2018, by and among the Pinecrest Seller, the County, and Borrower, pursuant to which the Pinecrest Seller is assigning the Original Pinecrest

Loan to Borrower and Borrower is assuming the Original Pinecrest Loan, as consented to by the County.

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

(aaaa) "Pinecrest HOME 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 County-Assisted Units located in the Pinecrest Improvements, to be recorded against the Pinecrest Property.

(bbbb) "Pinecrest Improvements" has the meaning set forth in Paragraph C of the Recitals.

(cccc) "Pinecrest Property" has the meaning set forth in Paragraph C of the Recitals.

(dddd) "Pinecrest Seller" has the meaning set forth in Paragraph C of the Recitals.

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

(ffff) "RCD" has the meaning set forth in Paragraph B of the Recitals.

(gggg) "Regulatory Agreements" means the Terrace Glen HOME Regulatory Agreement, the Terrace Glen County Regulatory Agreement, the Pinecrest HOME Regulatory Agreement, and the Pinecrest County Regulatory Agreement.

(hhhh) "Rehabilitation Standards" mean the Minimum Multi-Family Housing Rehabilitation Standards dated March 2017 and prepared by the County.

(iiii) "Rental Shortfall Due Date" has the meaning set forth in Section 2.10(c).

(jjjj) "Rental Shortfall Payment" has the meaning set forth in Section 2.10(c).

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

(llll) "Reserve Loan" has the meaning set forth in Section 1.1(g)(iv).

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

(nnnn) "Restructured Antioch Loan" means collectively, (i) the Eight Hundred Seventy Thousand Dollars (\$870,000) loan from Antioch to the Pinecrest Seller as assigned to and assumed by Borrower, and (ii) the One Million Three Hundred Ninety-Seven Thousand Six Hundred Twenty-Five Dollars (\$1,397,625) loan from Antioch to the Terrace Glen Seller as assigned to and assumed by Borrower, both restructured so that the new combined principal

amount is Three Million Five Hundred Twenty-Nine Thousand Six Hundred Thirty-Eight Dollars (\$3,529,638).

(oooo) "Restructured County Loans" means the Restructured Terrace Glen Loan and the Restructured Pinecrest Loan, with a combined principal balance of Two Million Three Hundred Seventy Thousand Nine Hundred Sixty-Two Dollars (\$2,370,962).

(pppp) "Restructured Pinecrest Loan" has the meaning set forth in Section 2.2(b).

(qqqq) "Restructured Pinecrest Note" has the meaning set forth in Section 2.2(b).

(rrrr) "Restructured Terrace Glen Loan" has the meaning set forth in Section 2.2(a).

(ssss) "Restructured Terrace Glen Note" has the meaning set forth in Section 2.2(a).

(tttt) "Retention Amount" means Twenty Thousand Dollars (\$20,000) of the New County Loan, the disbursement of which is described in Section 2.9.

(uuuu) "Sellers" means collectively the Terrace Glen Seller and the Pinecrest Seller.

(vvvv) "Senior Loan" has the meaning set forth in Section 2.7.

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

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

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

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

(aaaaa) "TCAC" has the meaning set forth in Paragraph E of the Recitals.

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

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

(dddd) "Terrace Glen Assignment Agreement" means the Assignment, Assumption and Consent Agreement dated September 30, 2018, by and among the Terrace Glen

Seller, the County, and Borrower, pursuant to which the Terrace Glen Seller is assigning the Original Terrace Glen Loan to Borrower and Borrower is assuming the Original Terrace Glen Loan, as consented to by the County.

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

(ffff) "Terrace Glen HOME 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 County-Assisted Units located in the Terrace Glen Improvements, to be recorded against the Terrace Glen Property.

(ggggg) "Terrace Glen Improvements" has the meaning set forth in Paragraph B of the Recitals.

(hhhhh) "Terrace Glen Property" has the meaning set forth in Paragraph B of the Recitals.

(iiii) "Terrace Glen Seller" has the meaning set forth in Paragraph B of the Recitals.

(jjjj) "Transfer" has the meaning set forth in Section 6.1 of the Regulatory Agreements.

#### Section 1.2 Exhibits

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

- Exhibit A-1: Legal Description of the Terrace Glen Property
- Exhibit A-2: Legal Description of the Pinecrest Property
- Exhibit B: Approved Development Budget
- Exhibit C: NEPA Mitigation Requirements

## ARTICLE 2 LOAN PROVISIONS

### Section 2.1 Overview of Original Development Loans.

(a) Original Terrace Glen Loan. The County made a loan of Six Hundred Fifteen Thousand Dollars (\$615,000) in HOME Funds to the Original Terrace Glen Borrower on November 4, 1996, which loan was increased to Eight Hundred Fifty-Six Thousand Dollars (\$856,000) on August 5, 1998, as assigned to the Terrace Glen Seller (the "Original Terrace Glen Loan"). The Original Terrace Glen Loan was evidenced by that certain HOME Loan Agreement dated November 4, 1996, between the County and the Original Terrace Glen Borrower as amended by a First Amendment to HOME Loan Agreement dated August 5, 1998 (the "Original

Terrace Glen Loan Agreement") and that certain promissory note executed by The Original Terrace Glen Borrower for the benefit of the County dated November 4, 1996, as superseded by that certain promissory note dated August 5, 1998 in the amount of Eight Hundred Fifty-Six Thousand Dollars (\$856,000) (the "Original Terrace Glen Note"). The Original Terrace Glen Loan was secured against the Terrace Glen Property by a Deed of Trust and Security Agreement dated August 5, 1998, executed by the Original Terrace Glen Borrower and recorded in the Official Records on August 25, 1998, as Instrument No. 98-202838 (the "Original Terrace Glen Deed of Trust"). In connection with the Original Terrace Glen Loan, The Original Terrace Glen Borrower and the County entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated November 4, 1996, recorded in the Official Records against the Terrace Glen Property on November 6, 1996, as Instrument No. 96-210492, as amended by a First Amendment to Regulatory Agreement dated August 5, 1998, recorded in the Official Records against the Terrace Glen Property on August 25, 1998, as Instrument No. 98-202840 (the "Original Terrace Glen Regulatory Agreement"). The Original Terrace Glen Loan was also evidenced by an Intercreditor Agreement by and among the County, Antioch, and the Original Terrace Glen Borrower dated, November 4, 1996, recorded in the Official Records against the Terrace Glen Property on November 6, 1996, as Instrument No. 96-210496, as amended by a First Amendment to Intercreditor Agreement dated August 5, 1998, recorded in the Official Records against the Terrace Glen Property on August 25, 1998, as Instrument No. 98-202844 (the "Original Terrace Glen Intercreditor Agreement").

(b) Original Pinecrest Loan. The County made a loan of Six Hundred Twenty-Five Thousand Dollars (\$625,000) in HOME Funds to the Pinecrest Seller on September 18, 2000 (the "Original Pinecrest Loan"). The Original Pinecrest Loan was evidenced by that certain HOME Loan Agreement dated September 18, 2000, between the County and the Pinecrest Seller, as amended by a First Amendment to HOME Loan Agreement dated November 1, 2000 (the "Original Pinecrest Loan Agreement") and that certain promissory note executed by the Pinecrest Seller for the benefit of the County dated September 18, 2000 (the "Original Pinecrest Note"). The Original Pinecrest Loan was secured against the Pinecrest Property by a Deed of Trust with Assignment of Rents and Security Agreement dated September 18, 2000, executed by the Pinecrest Seller and recorded in the Official Records on September 21, 2000, as Instrument No. 2000-204511 (the "Original Pinecrest Deed of Trust"). In connection with the Original Pinecrest Loan, the Pinecrest Seller and the County entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated September 18, 2000, recorded in the Official Records against the Pinecrest Property on September 21, 2000, as Instrument No. 2000-204510 (the "Original Pinecrest Regulatory Agreement"). The Original Pinecrest Loan was also evidenced by an Intercreditor Agreement by and among the County, Antioch, and the Pinecrest Seller dated September 18, 2000, recorded in the Official Records against the Pinecrest Property on September 21, 2000, as Instrument No. 2000-204507 (the "Original Pinecrest Intercreditor Agreement").

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

## Section 2.2 Combined County Loan.

(a) Terrace Glen Loan Amount. The outstanding principal balance of the

Original Terrace Glen Loan as of the date of this Agreement is Eight Hundred Fifty-Six Thousand Dollars (\$856,000). As of the date of this Agreement: (i) the Original Terrace Glen Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Terrace Glen Loan is Five Hundred Fifty-Six Thousand Eight Hundred Twenty-Seven Dollars (\$556,827), which amount is being capitalized into the outstanding principal balance on the Original Terrace Glen Loan for a total of One Million Four Hundred Twelve Thousand Eight Hundred Twenty-Seven Dollars (\$1,412,827) (the "Restructured Terrace Glen Loan"). The Restructured Terrace Glen Loan is evidenced by a promissory note executed by Borrower in the amount of the Restructured Terrace Glen Loan for the benefit of the County (the "Restructured Terrace Glen Note").

(b) Pinecrest Loan Amount. The outstanding principal balance of the Original Pinecrest Loan as of the date of this Agreement is Six Hundred Twenty-Five Thousand Dollars (\$625,000). As of the date of this Agreement the Original Pinecrest Loan has accrued interest from the date of disbursement at a simple interest rate of three percent (3%). The interest accrued to date on the Original Pinecrest Loan is Three Hundred Thirty-Three Thousand One Hundred Thirty-Five Dollars (\$333,135), which amount is being capitalized into the outstanding principal balance on the Original Pinecrest Loan for a total of Nine Hundred Fifty-Eight Thousand One Hundred Thirty-Five Dollars (\$958,135) (the "Restructured Pinecrest Loan"). The Restructured Pinecrest Loan is evidenced by a promissory note executed by Borrower in the amount of the Restructured Pinecrest Loan for the benefit of the County (the "Restructured Pinecrest Note").

(c) New County Loan. Through this Agreement, the County is loaning Borrower One Million Three Hundred Thousand Dollars (\$1,300,000) in HOME Funds (the "New County Loan"), evidenced by a promissory note executed by Borrower in the amount of the New County Loan for the benefit of the County (the "New Note").

(d) Combined County Loan. The Combined County Loan equals the sum of the Restructured County Loans and the New County Loan for a total amount of Three Million Six Hundred Seventy Thousand Nine Hundred Sixty-Two Dollars (\$3,670,962). Upon satisfaction of the conditions set forth in Section 2.8 and Section 2.9 of this Agreement, the County shall lend to Borrower the Combined County Loan for the purposes set forth in Section 2.5 of this Agreement. Borrower's obligation to repay the Combined County Loan is evidenced by the Notes.

### Section 2.3 New County Loan Documents.

(a) Loan Agreement. This Agreement replaces the following documents in their entirety: the Original Pinecrest Loan Agreement, and the Original Terrace Glen Loan Agreement, and such documents are deemed terminated hereby.

(b) Promissory Notes. At Closing, the County is cancelling the Original Pinecrest Note, and the Original Terrace Glen Note, and Borrower will execute the Notes.

(c) Deed of Trust. At Closing, the County is reconveying the Original Terrace Glen Deed of Trust, and the Original Pinecrest Deed of Trust, and recording the Deed of Trust as a lien against the Property.

(d) Regulatory Agreements; Affordability Notice. At Closing, the County is terminating the Original Pinecrest Regulatory Agreement, and the Original Terrace Glen Regulatory Agreement, and recording the Regulatory Agreements against the Property.

(e) Intercreditor Agreements. At Closing, the County is terminating the Original Pinecrest Intercreditor Agreement, and the Original Terrace Glen Intercreditor Agreement, and recording the Intercreditor Agreement against the Property.

#### Section 2.4 Interest on Loans.

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

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

(c) New County Loan. Subject to the provisions of subsection (d) below, the New County Loan will not bear interest.

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

#### Section 2.5 Use of New County Loan.

(a) Borrower shall use the New County Loan for construction costs and HOME-eligible soft costs in amounts consistent with the Approved Development Budget. Use of the New County 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) Borrower may not use the New County Loan for any other purposes without the prior written consent of the County.

#### Section 2.6 Security.

In consideration of the Combined County Loan, Borrower shall (i) secure its obligation to repay the Combined County Loan, as evidenced by the Notes, by executing the Deed of Trust,

and cause or permit it to be recorded as a lien against the Property, junior to the Bank Loan (and upon Permanent Conversion, to the Permanent Loan) pursuant to Section 2.7 below, senior to the Reserve Loan, and equal in lien priority to the Restructured Antioch Loan pursuant to the Intercreditor Agreement, and (ii) execute the Regulatory Agreements, and the Intercreditor Agreement, and cause or permit them to be recorded against the Property.

Section 2.7 Subordination.

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

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

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

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

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

(v) The subordination(s) of the Combined County Loan is effective only during the original term of the Senior Loan and any extension of its term 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 2.8 Conditions Precedent to Disbursement of New County Loan for Construction.

Until the conditions set forth in Section 2.9 have been met, the disbursements made pursuant to this Agreement may not exceed One Million Two Hundred Eighty Thousand Dollars (\$1,280,000). The County is not obligated to disburse any portion of the New County 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) Borrower holds title to the Property or is acquiring title to the Property simultaneously with the disbursement of the New County Loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) 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;

(q) 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;

(r) The County has received fully executed copies of the RAD Delayed Conversion Agreements between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance through the Rental Assistance

Demonstration Program by the Housing Authority for twelve (12) units in the Terrace Glen Improvements and nine (9) units in the Pinecrest Improvements;

(s) The County has received fully executed copies of the Agreement to Enter Housing Assistance Payment Contracts between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance for four (4) units in the Terrace Glen Improvements and three (3) units in the Pinecrest Improvements by the Housing Authority;

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

(u) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.8(a) continues to be satisfied; (ii) certification that the proposed uses of funds is consistent with the Approved Development Budget; (iii) the amount of funds needed; and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (1) certification by Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (2) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

#### Section 2.9 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 draft Cost Certification for the Development from Borrower showing all uses and sources;

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

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

(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 4.6(b)(9) of the Pinecrest HOME Regulatory Agreement and Section 4.6(b)(9) of the Terrace Glen HOME Regulatory Agreement, and MBE/WBE requirements;

(i) If Borrower was required to comply with relocation requirements as set forth in Section 3.10 below, 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 fully executed copies of the Housing Assistance Payment Contracts between Borrower and the Housing Authority governing the provision of project-based Section 8 rental assistance for four (4) units in the Terrace Glen Improvements and three (3) units in the Pinecrest Improvements by the Housing Authority;

(n) The County has received fully executed copies of the Rental Assistance Demonstration Housing Assistance Payment Contracts between Borrower and the Housing Authority governing the provision of project-based Section 8 rental assistance by the Housing Authority for twelve (12) units in the Terrace Glen Improvements and nine (9) units in the Pinecrest Improvements; and

(o) The County has received a written draw request from Borrower, including certification that the condition set forth in Section 2.8(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 2.10 Repayment Schedule.

(a) Annual Payments of Combined County Loan. Commencing on June 1, 2020 and on June 1 of each year thereafter during the Term, Borrower shall make a Combined County Loan payment in an amount equal to the 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 Combined County 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 Combined County Loan, an amount equal to the result obtained by multiplying the County Special Repayment Prorata Percentage by the Available Net Proceeds (the "Special County Loan Payment"). No later than one hundred eighty (180) days following completion of rehabilitation of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification. 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 Combined County Loan for Failure to Lease. If on or before the Rental Shortfall Due Date, Borrower fails to cause each of the HOME-Assisted Units be rented to and occupied by an Eligible Household in accordance with Section 2.1 of the Pinecrest HOME Regulatory Agreement and/or Section 2.1 of the Terrace Glen HOME 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 an Eligible Household on or before the Rental Shortfall Due Date, by (2) a fraction, the numerator of which is the then-outstanding principal balance of the HOME Funds portion of the New County 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 2.4(c) 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 Combined County Loan. Borrower shall pay all outstanding principal and accrued interest on the Combined County Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 6.1 of the Regulatory Agreements; (ii) an Event of Default; and (iii) the expiration of the Term.

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

#### Section 2.11 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full,

complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

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

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

(ii) A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual 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 Combined County Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.6 below.

#### Section 2.12 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Combined County Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Notes will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Notes, or impairs the right of County to assert the unpaid principal amount of the Notes as demand for money within the meaning and intentment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Notes. Nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the Loan Documents, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

## ARTICLE 3 REHABILITATION OF THE DEVELOPMENT

### Section 3.1 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the commencement of rehabilitation of the Development no later than November 15, 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 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 Development. All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that Borrower enters for rehabilitation of the Development is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the rehabilitation, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract will include all applicable HOME requirements set forth in Section 4.6 of the Pinecrest HOME Regulatory Agreement and Section 4.6 of the Terrace Glen HOME 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 Development is to be in the form approved by the County.

Section 3.4 Construction Bonds.

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

Section 3.5 Commencement of Construction.

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

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute rehabilitation of the Development to completion, and shall cause the rehabilitation of the Development to be completed no later than December 31, 2019, or such later date that the County approves in writing.

Section 3.7 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall rehabilitate the Development in conformance with (i) the plans and specifications approved by the building department of Antioch, 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 Antioch. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (i) any change in the work the cost of which exceeds Fifty Thousand Dollars (\$50,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds One Hundred Fifty Thousand Dollars (\$150,000) or ten percent (10%) of the Combined County Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

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

(i) all applicable laws, 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 Pinecrest HOME Regulatory Agreement and Section 5.6 of the Terrace Glen HOME Regulatory Agreement;

(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;

(iv) the Rehabilitation Standards provided by the County; and

(v) 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.

(i) To the extent required by Development funding sources, Borrower shall cause rehabilitation of the Development to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148).

(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 the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the rehabilitation of the Development or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Combined County 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 rehabilitation of the Development 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 Property, or shall cause the contractor to post at the Property, 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 rehabilitating the Development 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 rehabilitation of the Development to specify that:

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

(B) the rehabilitation of the Development 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 rehabilitation of the Development or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Combined County 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, if the rehabilitation is substantial as defined in 24 C.F.R. 8.23(a): (i) a minimum of two (2) units of the Pinecrest Improvements, and two (2) units of the Terrace Glen Improvements, must be rehabilitated to be fully accessible to households with a mobility impaired member and, (ii) an additional one (1) unit of the Pinecrest Improvements, and one (1) unit of the Terrace Glen Improvements must be rehabilitated to be fully accessible to hearing and/or visually impaired persons. Non-substantial alterations must comply with 24 C.F.R. 8.23(b). 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. This obligation to indemnify survives termination of this Agreement, repayment of the Combined County Loan and the reconveyance of the Deed of Trust.

### Section 3.10 Relocation.

(a) If and to the extent that acquisition and development of the Property will result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.) 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.

(b) Borrower shall indemnify, defend and hold harmless, (with counsel reasonably acceptable to the County), the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including

reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower, or the County) to satisfy relocation obligations related to the acquisition and development of the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Combined County Loan and the reconveyance of the Deed of Trust.

### Section 3.11 Equal Opportunity.

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

### Section 3.12 Minority and Women-Owned Contractors.

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

### Section 3.13 Progress Reports.

Until such time as Borrower has received a certificate of occupancy (or functional equivalent) from Antioch for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the rehabilitation of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.16 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 rehabilitation of the Development takes place in accordance with this Agreement.

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

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

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

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

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

Section 3.16 Inspections.

(a) 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.

(b) The County will perform inspections both during and upon completion of construction of the Development to determine if the Development is being constructed in accordance with the HOME Regulations, including the property standards set forth in 24 C.F.R. 92.251, and the Rehabilitation Standards. Borrower shall give the County notice when the rehabilitation of the Development is complete. If the County determines the Development is not being constructed in accordance with the HOME Regulations and the Rehabilitation Standards, 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 3.17 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 total of Developer Fee paid, whether paid up-front out of development sources or on a deferred basis out of Annual Operating Expenses, is not to exceed Two Million Four Hundred Forty-Five Thousand Two Hundred Forty-Seven Dollars (\$2,445,247), provided that Borrower's general partner is required to make a capital contribution of at least Five Hundred Eleven Three Hundred Forty-Four Dollars (\$511,344) to the Partnership prior to or at Permanent Conversion. The amount of Developer Fee payable to the Developer out of development sources shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

Section 3.19 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. The Partnership/Asset Fee may accrue for a period not to exceed three (3) fiscal years following the year during which they are earned.

Section 3.20 NEPA Mitigation Requirements.

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

ARTICLE 4 LOAN REQUIREMENTS

Section 4.1 Match Requirement.

Borrower shall ensure that the New County Loan is matched with a minimum of Three Hundred Twenty-Five Thousand Dollars (\$325,000) 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 rehabilitation of the Development, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds for the Development.

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

#### Section 4.4 Approval of Annual Operating Budget.

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

#### Section 4.5 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 Combined County 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 Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

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



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

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

(f) Borrower hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Borrower's response) concerning

the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

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

#### Section 4.8 Maintenance; Damage and Destruction.

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

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

Borrower to the County as a special repayment of the Combined County Loan, subject to the rights of the senior lenders, if any.

Section 4.9 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 Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

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

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

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

Section 4.10 Notice of Litigation.

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

Section 4.11 Operation of Development as Affordable Housing.

Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as an affordable housing development consistent with: (1) HUD's requirements for use of 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 Restructured Antioch 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, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age, familial status (except for lawful senior housing in accordance with state and federal law), or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant will run with the land.

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

Section 4.13 Insurance Requirements.

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

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

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

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

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

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

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

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

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

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; and (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained.

#### Section 4.14 Covenants Regarding Approved Financing and Partnership Agreement.

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

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

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing in any material respect without the prior written consent of the County except for amendments solely to effectuate Transfers permitted under Section 6.1 of the Regulatory Agreements. Borrower shall provide the County copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of Approved Financing.

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

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Combined County Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.10 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered an Event of Default.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

### Section 5.1 Representations and Warranties.

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

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

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

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

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

(e) No Breach of Law or Agreement. Neither the execution nor delivery of the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Borrower, or conflict with any provision of the

organizational documents of Borrower, or conflict with any agreement to which Borrower is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

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

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

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 2.8(h) above, or approved in writing by the County.

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

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

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

(l) Hazardous Materials. To the best of Borrower's knowledge, except as

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

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

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

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

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

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

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

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

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

(f) Insolvency. If a court having jurisdiction makes or enters any decree or order: (i) adjudging Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed



a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Notes.

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

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

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

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

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 6.1 of the Regulatory Agreements.

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

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

## Section 6.2 Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the County is relieved of any obligation to disburse any portion of the New County Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County may proceed with any and all remedies available

to it under law, this Agreement, and the other Loan Documents. Such remedies include but are not limited to the following:

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

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

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

#### Section 6.3 Right of Contest.

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

#### Section 6.4 Remedies Cumulative.

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

#### Section 6.5 Notice and Cure Rights of Limited Partner.

The County shall provide the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County ("Permitted Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon

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

## ARTICLE 7 GENERAL PROVISIONS

### Section 7.1 Relationship of Parties.

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

### Section 7.2 No Claims.

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

### Section 7.3 Amendments.

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

Section 7.4 Indemnification.

Borrower shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees. This obligation to indemnify survives termination of this Agreement, repayment of the Combined County Loan 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 6.5 and Section 6.1(c) and 6.1(f) of the Regulatory Agreements.

Section 7.7 Discretion Retained By County.

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

Section 7.8 Conflict of Interest.

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

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

(c) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family

member of any of the preceding, may make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 7.9 Notices, Demands and Communications.

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

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

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

Investor Limited  
Partner: RSEP Holding, LLC  
c/o Red Stone Equity Partners, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

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

Section 7.10 Applicable Law.

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

Section 7.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Borrower and its successors and

assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 7.12 Attorneys' Fees.

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

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

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

Section 7.15 County Approval.

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

Section 7.16 Waivers.

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

Section 7.17 Title of Parts and Sections.

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

Section 7.18 Entire Understanding of the Parties.

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

Section 7.19 Multiple Originals; Counterpart.

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

*[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: November 1, 2018

APPROVED AS TO FORM:

SHARON L. ANDERSON  
County Counsel

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

**BORROWER:**

ANTIOCH RECAP, 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: November 1, 2018



EXHIBIT A-1

LEGAL DESCRIPTION OF THE TERRACE GLEN PROPERTY

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

PARCEL ONE:

LOTS 2, 3, 5, 6, 9, 10 AND 13, MAP OF ANTIOCH BUSINESS CENTER, FILED ON JULY 14, 1947, MAP BOOK 33, PAGE 33, CONTRA COSTA COUNTY RECORDS.

PARCEL TWO:

PORTION OF CESA LANE (VACATED) AS SHOWN ON THE MAP OF ANTIOCH BUSINESS CENTER, FILED JULY 14, 1947, MAP BOOK 33, PAGE 33, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST LINE OF CESA LANE AS SHOWN AS SAID MAP (33 M 33) DISTANT THEREON SOUTH 0° 02' EAST, 12 ½ FEET FROM THE SOUTHWEST CORNER OF LOT 2 AS SHOWN ON SAID MAP (33 M 33), THENCE FROM SAID POINT OF BEGINNING EAST PARALLEL WITH THE SOUTH LINE OF LOTS 2, 3, 5, 6, 9, 10 AND 13, AS SHOWN ON SAID MAP (33 M 33) TO THE DIRECT NORTHERLY EXTENSION OF THE EAST LINE OF LOT B AS SHOWN ON SAID MAP (33 M 33); THENCE NORTH ALONG SAID EXTENSION 12 ½ FEET TO THE SOUTH LINE OF SAID LOT 13; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 13 AND ALONG THE SOUTH LINE OF SAID LOTS 10, 9, 6, 5, 3 AND 2, 319.70 FEET TO THE WEST LINE OF SAID CESA LANE; THENCE SOUTH 0° 02' EAST, ALONG SAID WEST LINE 12 ½ FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

LOT 4, MAP OF ANTIOCH BUSINESS CENTER, FILED JULY 14, 1947, MAP BOOK 33, PAGE 33, CONTRA COSTA COUNTY RECORDS.

PARCEL FOUR:

LOT 1, MAP OF ANTIOCH BUSINESS CENTER, FILED JULY 14, 1947, MAP BOOK 33, PAGE 33, CONTRA COSTA COUNTY RECORDS.

APN: 067-251-015-3, 067-252-011-1 AND 067-252-010-3-01

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PINECREST PROPERTY

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

A PORTION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19 TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM TIMOTHY F. BROWN, SR. TO TIMOTHY F. BROWN, JR., RECORDED OCTOBER 2, 1956, IN BOOK 2854 OF OFFICIAL RECORDS, PAGE 527, DISTANT THEREON EAST, 263 FEET FROM THE NORTHWEST CORNER THEREOF, SAID POINT OF BEGINNING ALSO BEING THE NORTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM TIMOTHY BROWN, SR., A WIDOWER, TO TIMOTHY BROWN, JR., RECORDED APRIL 14, 1955 IN BOOK 2515, OFFICIAL RECORDS, PAGE 137; THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID BROWN PARCEL (2854 OR 527) AS FOLLOWS; WEST. 263 FEET; SOUTH 110 FEET AND EAST 263 FEET TO THE SOUTHWEST CORNER OF SAID BROWN PARCEL (2515 OR 137); THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL (2515 OR 137); 110 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. THE INTEREST OF CONTRA COSTA COUNTY IN THE WEST 20 FEET THEREOF, AS DESCRIBED IN THE DEED RECORDED FEBRUARY 15, 1938, IN BOOK 453 OF OFFICIAL RECORDS, PAGE 382.
2. THE INTEREST OF THE CITY OF ANTIOCH IN THE EAST 10 FEET OF THE WEST 30 FEET THEREOF, "FOR THE PURPOSE OF A PUBLIC STREET OR HIGHWAY" AS DESCRIBED IN THE DEED RECORDED OCTOBER 5, 1951, IN BOOK 1832 OF OFFICIAL RECORDS, PAGE 262.

APN: 067-251-015-3 and 067-252-011-1 and 067-252-010-3-01 and 068-061-024

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

**EXHIBIT C**  
**NEPA MITIGATION REQUIREMENTS**

Mitigation Measure(s)	Source	Method and date County staff informed Project Sponsor	Included in County loan document and /or project agreement	Verification of Mitigation Measure(s)	Responsible for implementation	Mitigation Timing	Responsible for monitoring and reporting on implementation	Monitoring and reporting frequency	Verification of compliance
<b>Contamination and Toxic Substances</b>  CT1 (Pinecrest) CT2 (Pinecrest) CT3 (Pinecrest) CT4 (Pinecrest) CT5 (Pinecrest)	Environmental Review by AEM Consulting July 2016		<input checked="" type="checkbox"/>	<input type="checkbox"/> Copy of Bay Area Quality Management District Permit	Asbestos licensed contractor  Lead-based paint licensed contractor	Pre and post rehabilitation	Architect and contractor	Once after rehabilitation	<input type="checkbox"/> Final Certification/permit
CT1 (Terrace Glen) CT2 (Terrace Glen)	Environmental Review by AEM Consulting July 2016		<input checked="" type="checkbox"/>	<input type="checkbox"/> Copy of Bay Area Quality Management District Permit	Asbestos licensed contractor  Lead-based paint licensed contractor	Pre and post rehabilitation	Architect and contractor	Once after rehabilitation	<input type="checkbox"/> Final Certification/permit

**CT1 (Pinecrest)** - The apartments were constructed in 1963, prior to the 1978 ban on lead-based paint (LBP); therefore, LBP may be present. LBP is presumed to have been used on interior and exterior surfaces of the structures. Presumed LBP should be handled in accordance with local, state and federal regulations.

**CT2 (Pinecrest)** - The apartments were constructed in 1963, at a time when the use of asbestos containing materials (ACMs) were prevalent in construction practices. ACMs which are to be impacted by the renovation activities should be conducted by a licensed asbestos abatement contractor in accordance with applicable local, state, and federal guidelines. In addition, any remaining identified ACMs and/or PACMs should be managed in place under a site-specific Operations and Maintenance (O&M) Program.

**CT3 (Pinecrest)** - Due to the above findings, a minimum of a lead-based paint and asbestos survey is required to determine if such materials are present.

**CT4 (Pinecrest)** - If found to be present and may be disturbed by rehabilitation activities, the materials must be abated.

**CT5 (Pinecrest)** - If materials will not be disturbed, an on-going O&M Program must be developed and implemented.

**CT1 (Terrace Glen)** - Asbestos removal activities must be conducted by a licensed asbestos abatement contractor in accordance with applicable local, state and federal guidelines. In addition, any remaining identified ACMs and/or PACMs shall be managed in place under a site-specific O&M Program.

**CT2 (Pinecrest)** - A lead-based paint survey is require to determine if such materials are present. If found to be present and may be disturbed by rehabilitation activities, the materials must be abated or encapsulated. If materials will not be disturbed, an on-going O&M Program must be developed and implemented.

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EXHIBIT B	Approved Development Budget
EXHIBIT C	NEPA Mitigation Requirements



DEVELOPMENT LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

ANTIOCH RECAP, L.P.

ANTIOCH SCATTERED SITE RENOVATION

dated November 1, 2018