



CONSTRUCTION AND PERMANENT LOAN AGREEMENT  
(MULTIFAMILY HOUSING BACK TO BACK LOAN PROGRAM)

by and among

CITY OF SAN JOSE

as Governmental Lender,

MUFG UNION BANK, N.A.,

as Bank

and

QUETZAL GARDENS, L.P.,  
a California limited partnership

as Borrower

Dated: December 1, 2019

Relating to

[\$32,207,500]

City of San Jose, California Multifamily  
Housing Revenue Note (Quetzal Gardens Apartments), Series 2019E

(Quetzal Gardens Apartments)

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**CONSTRUCTION AND PERMANENT LOAN AGREEMENT  
(Multifamily Housing Back to Back Loan Program)  
(Quetzal Gardens Apartments)**

**THIS AGREEMENT** is made as of the Contract Date by and among Borrower, Governmental Lender and Bank in connection with the following:

- A.** Borrower has requested that Governmental Lender provide a construction and permanent loan to Borrower to finance the construction of the Improvements on the Real Property.
- B.** Borrower owns or will own, concurrently with the first loan disbursement under this Agreement, the Leasehold Estate.
- C.** Borrower intends to construct an affordable housing apartment project on the Real Property.
- D.** Governmental Lender, Bank and Fiscal Agent have entered into the Funding Loan Agreement whereby Bank has agreed to make the Funding Loan to Governmental Lender for the sole purpose of making funds available to the Governmental Lender to make the Borrower Loan to Borrower pursuant to this Agreement in the manner and on the terms set forth in the Funding Loan Agreement, which terms include, without limitation, the obligation of the Governmental Lender to make loan payments to the Bank from certain amounts received by Governmental Lender from Borrower pursuant to this Agreement and the Borrower Note in repayment of the amounts loaned to Governmental Lender under the Funding Loan Agreement as evidenced by the Funding Loan Note. Governmental Lender has irrevocably pledged and assigned to Bank, as security for Governmental Lender's obligations to repay amounts due under the Funding Loan Note and its obligations under the Funding Loan Agreement, all right, title and interest to the Borrower Loan Documents (other than the Reserved Rights, as defined in the Funding Loan Agreement), including all rights to payments on the Borrower Note. Upon the execution of the Funding Loan Note, all right, title and interest of Governmental Lender under and in the Borrower Loan (other than the Reserved Rights, as defined in the Funding Loan Agreement) will be assigned by Governmental Lender to Bank pursuant to the Funding Loan Agreement and the Assignment of Deed of Trust.
- E.** All of the rights, powers, elections, determinations, remedies, duties and functions of Governmental Lender hereunder (other than the Reserved Rights, as defined in the Funding Loan Agreement) may be exercised and performed on behalf of Governmental Lender by Bank unless and until the assignment to Bank is terminated, modified, assigned, in whole or in part, or otherwise amended in accordance with the provisions of the Funding Loan Agreement.
- F.** Subject to the execution of the Funding Loan Agreement and the terms and conditions of this Agreement, Governmental Lender is willing to make the Borrower Loan to Borrower.

THEREFORE, the parties hereto agree as follows:

**1. DEFINITIONS.**

**1.1 Acceptable Unit Lease.** A lease agreement on a lease form approved by Bank which is entered into by and between Borrower and the lessee of a Unit and the terms (including the amount of rent payments) of which comply with the provisions of all Regulatory Agreements, the Ground Lease and the Subordinate Lender Documents.

**1.2 Act.** As defined in the Funding Loan Agreement.

**1.3 Advance.** Each disbursement of proceeds of the Borrower Loan made pursuant to this Agreement.

**1.4 Aggregate Change Order Limit.** \$100,000. [CHECK]

**1.5 Agreement or Borrower Loan Agreement.** This Construction and Permanent Loan Agreement (Multifamily Housing Back to Back Loan Program).

**1.6 Agreement to Furnish Insurance.** The Agreement to Furnish Insurance dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.7 AHAP Contract.** The Agreement to Enter Into Housing Assistance Payments Contract entered into between Borrower and the Housing Authority, and effective as of [\_\_\_\_\_] [CHECK], for thirty-two (32) Units at the Property, with a term of twenty (20) years and a twenty (20) year renewal option, and on such other terms as are acceptable to the Bank.

**1.8 AHP Deed of Trust.** That certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (AHP Rental Project Direct Subsidy) dated as of the Contract Date, executed by Borrower for the benefit of AHP Lender, encumbering the Project and securing repayment of amounts owing under the AHP Note, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.9 AHP Lender.** MUFG Union Bank, N.A.

**1.10 AHP Loan.** That certain affordable housing program loan in an amount of not more than \$700,000 from AHP Lender.

**1.11 AHP Documents.** The AHP Note, the AHP Deed of Trust, the AHP Subordination Agreement and all other documents and instruments evidencing, securing or pertaining to the AHP Loan.

**1.12 AHP Note.** The Promissory Note (AHP Rental Project), in form and content acceptable to Bank, made by Borrower to the order of the AHP Lender, evidencing all amounts to be disbursed under the AHP Loan.

**1.13 AHP Subordination Agreement.** A Subordination Agreement in form and substance satisfactory to Bank, executed by AHP Lender and Borrower, pursuant to which the AHP Lender shall unconditionally subordinate the lien and effect of the AHP Deed of Trust to the lien and effect of the Deed of Trust.

**1.14 Allocation Committee.** The California Tax Credit Allocation Committee and any successor governmental agency appointed to carry out the obligations of the Allocation Committee.

**1.15 Amortization Date.** The first day of the calendar month after the Outside Conversion Date.

**1.16 Appraisal.** An appraisal or reappraisal of the Property (complying with Bank's appraisal policy) performed or to be performed by a certified real estate appraiser engaged by Bank.

**1.17 Appraised Value.** The market value of the Property as determined by Bank in its business judgment, reasonably exercised, based upon an Appraisal.

**1.18 Architect.** SGPA Planning and Architecture San Diego, a California corporation, or such other architect as may be approved by Bank.

**1.19 Architect's Agreement.** The agreement between Borrower and Architect relating to the design and construction of the Improvements.

**1.20 Assignment of AHAP Contract.** The Assignment of Agreement to Enter Into Housing Assistance Payments Contract, on Bank's form, executed by Borrower in favor of Bank as additional collateral security for the performance of Borrower's obligations under the Borrower Loan Documents, as the same may from time to time be amended, modified or supplemented, assigning to Bank all of Borrower's rights under the AHAP Contract together with that certain Consent to Assignment of AHAP Contract attached thereto and executed by the Housing Authority.

**1.21 Assignment of Construction Contract.** The Assignment of Construction Contract dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.22 Assignment of HAP Contract.** The Assignment of Housing Assistance Payments Contract on Bank's form to be executed by Borrower upon execution of the HAP Contract and prior to the Permanent Loan Conversion Date in favor of Bank, as additional collateral security for the performance of Borrower's obligations under the Agreement, assigning to Bank all of Borrower's rights under the HAP Contract, together with the consent to the assignment of the HAP Contract, in form and substance satisfactory to Bank, executed by the Housing Authority.

**1.23 Assignment of Hedge.** As defined in Section 7.49.

**1.24 Assignment of Partnership Interest (GP).** An Assignment of Partnership Interest dated as of the Contract Date executed by each General Partner in favor of Governmental Lender and Bank as additional collateral security for the performance of the Borrower's obligations under the Borrower Loan Documents, assigning to Governmental Lender and Bank all of each such General Partner's rights as a general partner in Borrower.

**1.25 Assignment of Plans and Specifications.** The Assignment of Architect's Agreement, Plans and Specifications dated as of the Contract Date executed by Borrower, in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.26 Assignment of Tax Credits and Partnership Interests.** An Assignment of Rights to Tax Credits and Partnership Interests dated as of the Contract Date executed by Borrower in favor of Governmental Lender and Bank as additional collateral security for the performance of Borrower's obligations under the Borrower Loan Documents, assigning to Governmental Lender and Bank all of Borrower's rights under the Tax Credit Allocation Documents including, without limitation, the right to receive the Tax Credits set forth under the Tax Credit Allocation Documents and any interest Borrower may have in any partnership interest of Tax Credit Investor in the Borrower.

**1.27 Bank.** MUFG Union Bank, N.A. (i) acting in its capacity as owner of the Funding Loan Note and as assignee of and agent under this Agreement for the Governmental Lender pursuant to the Funding Loan Agreement, and (ii) its successors and assigns.

**1.28 Bonded Work.** Offsite, common area, or other improvements required by a Governmental Authority or for which bonds may be required in connection with the development of the Real Property.

**1.29 Borrower.** Quetzal Gardens, L.P., a California limited partnership.

**1.30 Borrower's Equity.** As of any date of determination, Borrower's funds expended on Project costs in accordance with this Agreement as of such date, including Borrower's Funds and capital contributions made by the Tax Credit Investor, but excluding proceeds of the Borrower Loan, as determined by Bank in its sole discretion.

**1.31 Borrower's Funds.** All funds of Borrower deposited into Borrower's Funds Account pursuant to the terms of this Agreement, to be disbursed in payment of Construction Costs as more particularly set forth in this Agreement.

**1.32 Borrower's Funds Account.** An account with Bank into which Borrower's Funds shall be deposited as provided for in Section 5.6, Section 7.2 or any other provision of this Agreement.

**1.33 Borrower Loan.** The loan in the maximum principal amount of \$[32,207,500] made by the Governmental Lender to Borrower pursuant to this Agreement.

**1.34 Borrower Loan Documents.** This Agreement, the Borrower Note, the Tax-Exempt Regulatory Agreement, the Deed of Trust, the Guaranty, the ECA, the Security Documents, the Financing Statements, the Agreement to Furnish Insurance, any Hedge Documents, the Indemnity Agreement and all other agreements, instruments and documents (together with amendments, supplements and replacements thereto) now or hereafter executed and delivered to Governmental Lender or Bank in connection with the Borrower Loan.

**1.35 Borrower Note.** The Promissory Note (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as maker, in favor of Governmental Lender in the original principal amount of the Borrower Loan.

**1.36 Business Day.** (i) Except as otherwise provided in clause (ii) below, a day which is not a Saturday or Sunday on which banks in the State of California are open for business for the funding of corporate loans, or (ii) for use only in connection with the definition of LIBOR Rate, a day which is both a New York Banking Day and a London Banking Day.

**1.37 Capital Improvement Reserve Account.** An interest-bearing account established with Bank by Borrower at the time of Conversion for the purpose of funding any capital improvements which are necessary for the continued operation of the Property.

**1.38 Capital Improvements.** As defined in Section 7.37.1.

**1.39 Certification of Plans and Specifications.** The Certification of Plans and Specifications dated as of the Contract Date from Borrower, Contractor and Architect to Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.40 Change Order.** Any change or supplement to the Plans, Construction Contract or subcontract as permitted by this Agreement.

**1.41 City.** City of San Jose, California, a charter city and municipal corporation.

**1.42 City Deed of Trust.** The deed of trust executed by Borrower for the benefit of the City, encumbering the Project and securing repayment of amounts owing under the City Note, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.43 City Documents.** The City Restrictions, the City Note, the City Loan Agreement, the City Deed of Trust, the City Subordination Agreement, and all other documents and instruments evidencing, securing or pertaining to the City Loan.

**1.44 City Loan.** The \$[9,984,534] loan made by the City to Borrower pursuant to the terms of the City Loan Agreement.

**1.45 City Loan Agreement.** The loan agreement by and between the City and Borrower, pursuant to the terms of which City agreed to make the City Loan.

**1.46 City Note.** The \$[9,984,534] promissory note made by Borrower to the order of the City, evidencing all amounts disbursed and to be disbursed under the City Loan.

**1.47 City Restrictions.** That certain 75-Year Affordability Restrictions dated [\_\_\_\_\_] [CHECK] and recorded in the Official Records of the County, executed by and between Borrower and the City in connection with City's making the City Loan.

**1.48 City Subordination Agreement.** A subordination agreement in form and substance satisfactory to Bank, executed by City and Borrower, pursuant to which City shall unconditionally subordinate the lien and effect of the City Deed of Trust to the lien and effect of the Deed of Trust.

**1.49 Closing Date.** The date on which the Deed of Trust is recorded and the Initial Disbursement is made.

**1.50 Code.** The Internal Revenue Code of 1986, as amended; including (a) any successor internal revenue law and (b) the applicable regulations promulgated thereunder whether final, temporary or proposed under the Code or such successor law.

**1.51 Completion Date.** The date of Project Completion, which date shall not be later than [July 1, 2021]. [CHECK]

**1.52 Conditions to Conversion.** The conditions precedent to Conversion as listed on Exhibit D attached hereto.

**1.53 Construction Contract.** The agreement between Borrower and Contractor relating to the construction of the Improvements.

**1.54 Construction Costs.** All costs approved by Bank relating to the construction of the Improvements or otherwise pertaining to the Property, as set forth in the Detailed Cost Breakdown.

**1.55 Construction Phase.** The period from the Closing Date through and including the date immediately preceding the Conversion Date.

**1.56 Contract Date.** December 1, 2019.

**1.57 Contractor.** James E. Roberts-Obayashi Corp., or such other contractor as may be approved by Bank, or Borrower acting in the capacity of general contractor.

**1.58 Conversion.** The conversion of the Borrower Loan from the Construction Phase to the Permanent Phase.

**1.59 Conversion Date.** The date on which all Conditions to Conversion have been satisfied, as such date is established by Bank in the Conversion Notice. The Conversion Date shall be the first day of the calendar month following the month in which Bank issues the Conversion Notice, but in no event later than the Outside Conversion Date.

**1.60 Conversion Election Notice.** Written notice delivered by Borrower to Bank that Borrower has elected to convert the Borrower Loan from the Construction Phase to the Permanent Phase.

**1.61 Conversion Notice.** Written notice delivered by Bank to Borrower that the Conditions to Conversion have been fully satisfied.

**1.62 County.** The County of Santa Clara, a political subdivision of the State of California.

**1.63 County Deed of Trust.** The deed of trust executed by Borrower for the benefit of the County, encumbering the Project and securing repayment of amounts owing under the County Note, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.64 County Documents.** The County Restrictions, the County Note, the County Loan Agreement, the County Deed of Trust, the County Subordination Agreement, and all other documents and instruments evidencing, securing or pertaining to the County Loan.

**1.65 County Loan.** The \$[8,565,534] loan made by the County to Borrower pursuant to the terms of the County Loan Agreement.

**1.66 County Loan Agreement.** The loan agreement by and between the County and Borrower pursuant to the terms of which County agreed to make the County Loan.

**1.67 County Note.** The promissory note in the amount of the County Loan, made by Borrower to the order of the County, evidencing all amounts disbursed and to be disbursed under the County Loan.

**1.68 County Restrictions.** That certain Amended and Restated Affordability Covenants and Restrictions Affecting Real Property executed by Borrower for the benefit of County in connection with County's making the County Loan.

**1.69 County Subordination Agreement.** A subordination agreement in form and substance satisfactory to Bank, executed by County and Borrower, pursuant to which County shall unconditionally subordinate the lien and effect of the County Deed of Trust and the County Restrictions to the lien and effect of the Deed of Trust.

**1.70 Debt Coverage Ratio.** The ratio of (i) the annual stabilized Net Operating Income for the Property during a particular period of time, to (ii) the assumed combined interest and principal payment for the Permanent Phase that would be required based upon the projected outstanding principal balance of the Borrower Note, as of the Conversion Date, and any required payments under the Subordinate Loans, assuming a fixed interest rate on the Borrower Note equal to the fixed rate of the Hedge (inclusive of the Margin) and monthly amortization payments on the Borrower Note based upon a three hundred (300) month amortization period and any secondary financing permitted pursuant to the Borrower Loan Documents.

**1.71 Deed of Trust.** The Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (Multifamily Housing Back to Back Loan Program) dated as of the Contract Date from Borrower, as trustor, for the benefit of Governmental Lender and Bank, as beneficiary, as the same may from time to time be amended, modified or supplemented.

**1.72 Deed of Trust Assignment.** The Assignment of Deed of Trust and Related Documents dated as of the Contract Date by Governmental Lender in favor of Bank.

**1.73 Default Rate.** A rate equal to 5% more than the applicable Variable Rate.

**1.74 Detailed Cost Breakdown.** An itemized schedule on a component, unit and trade breakdown basis showing all costs and expenses required for construction of the Improvements in accordance with the Plans, which has been submitted to and approved by Bank.

**1.75 Developer.** Resources for Community Development, a California nonprofit public benefit corporation.

**1.76 Disbursement Schedule.** The schedule or schedules for disbursement of the Advances and of Borrower's Funds, if any, set forth on Exhibit B, which may be amended from time to time by reallocations made in accordance with Section 5.5.

**1.77 Draw Request.** The certified invoice to be delivered by Borrower to Bank as a condition to Governmental Lender making an Advance, in such form and certified by such parties as required by Bank, together with such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information as may be required by Bank.

**1.78 ECA.** The Environmental Compliance Agreement, dated as of the Contract Date by Borrower in favor of Governmental Lender and Bank, as the same may from time to time be amended, modified or supplemented.

**1.79 Event of Default.** As defined in Section 8.

**1.80 Extended Use Agreement.** An “extended low-income housing commitment” as defined in Section 42(h)(6)(B) of the Code.

**1.81 Financial Statements.** Balance sheets, income statements, statements of retained earnings with supporting schedules and such other financial reports as Bank may require, in form and content acceptable to Bank.

**1.82 Fee Owner.** The County.

**1.83 Financing Statements.** All UCC financing statements required in connection with the Borrower Loan.

**1.84 First Extended Outside Conversion Date.** As defined in Section 2.6.

**1.85 First Extension Term.** As defined in Section 2.6.

**1.86 First Payment Date.** January 1, 2020.

**1.87 Fiscal Agent.** The Fiscal Agent from time to time under the Funding Loan Agreement. Initially the Fiscal Agent shall be U.S. Bank National Association, a national banking association.

**1.88 Force Majeure.** Strikes, lockouts, acts of God, severe shortages of labor or materials, acts of the public enemy, riot, war, fire or other delays beyond the reasonable control of Borrower.

**1.89 Funding Date.** The date on which the Initial Disbursement is made.

**1.90 Funding Loan.** The loan in the maximum amount of \$[32,207,500] made by Bank to Governmental Lender pursuant to the Funding Loan Agreement.

**1.91 Funding Loan Agreement.** The Funding Loan Agreement dated as of the Contract Date among the Governmental Lender, the Bank and Fiscal Agent in connection with the issuance of the Funding Loan Note.

**1.92 Funding Loan Documents.** As defined in the Funding Loan Agreement.

**1.93 Funding Loan Note.** As defined in the Funding Loan Agreement.

**1.94 General Partner(s).** RCD GP III LLC, a California limited liability company.

**1.95 Governmental Authority.** Any federal, state or local governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public or private utility having authority over the Property or its utilization.

**1.96 Governmental Lender.** City.

**1.97 Governmental Requirement.** Any law, statute, order, ordinance, rule, regulation, permit or act of a Governmental Authority.

**1.98 Gross Operating Income.** The sum of any and all payments, fees, rentals, additional rentals (but specifically excluding any amounts received from tenant-based vouchers or other tenant-based rent subsidies in excess of then maximum rents permitted under the Regulatory Agreements), expense reimbursements (including, without limitation, all reimbursements by tenants, subtenants, licensees and other users of the Property), income, interest, and other monies received directly or indirectly by or on behalf of Borrower from any Person with respect to Borrower's ownership, use, development or operation of the Property, including, without limitation, any leasing or licensing of the Property. Gross Operating Income shall be computed on a cash basis and shall include for each monthly statement all amounts actually received in such month whether or not such amounts are attributable to a charge arising in such month, except that income from rental subsidies shall be taken into account on an accrual basis.

**1.99 Ground Lease.** That certain Ground Lease entered into by and between Borrower, as ground lessee, and Fee Owner, as ground lessor, dated [\_\_\_\_\_] [CHECK].

**1.100 Ground Lease Estoppel Certificate.** An Estoppel Certificate, on Bank's form, duly executed by Fee Owner, providing such certifications as Bank may require with respect to the Ground Lease and the Leasehold Estate.

**1.101 Guarantor.** Any Person who executes a Guaranty in connection with the Borrower Loan.

**1.102 Guaranty.** Bank's standard form Loan and Completion Guaranty, Loan Guaranty, Completion Guaranty or Interest and Maintenance Guaranty, as the case may be entered into in connection with the Borrower Loan.

**1.103 HAP Contract.** The Housing Assistance Payments Contract to be entered into between Borrower and the Housing Authority on or before the Conversion Date in the form attached to the AHAP Contract and consistent with the terms of the final proposal attached to the AHAP Contract.

**1.104 HCD.** The Department of Housing and Community Development, a public agency of the State of California.

**1.105 HCD Deed of Trust.** The deed of trust to be executed by Borrower for the benefit of the HCD, encumbering the Project and securing repayment of amounts owing under the HCD Note, the lien of which is to be subject and subordinate to the lien of the Deed of Trust.

**1.106 HCD Documents.** The HCD Note, the HCD Loan Agreement, the HCD Deed of Trust, the HCD Restrictions, the HCD Subordination Agreement, and all other documents and instruments evidencing, securing or pertaining to the HCD Loan.

**1.107 HCD Estoppel Letter.** That certain Estoppel Letter - Permanent Takeout Financing dated [\_\_\_\_\_] [CHECK], executed by HCD in favor of Bank relating to the HCD Loan in form and content acceptable to Bank.

**1.108 HCD Loan.** The \$[7,107,082] permanent loan to be made by HCD to Borrower on or before the Conversion Date pursuant to the terms of the HCD Loan Agreement to cover, among other things, the construction of the Improvements.

**1.109 HCD Loan Agreement.** The Standard Agreement dated [\_\_\_\_\_] [CHECK], by and between HCD and Borrower, pursuant to the terms of which HCD agreed to make the HCD Loan.

**1.110 HCD Note.** The \$[7,107,082] promissory note to be made by Borrower to the order of HCD, evidencing all amounts disbursed and to be disbursed under the HCD Loan.



**1.111 HCD Restrictions (Junior).** That certain [Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing] executed by Borrower for the benefit of HCD in connection with the HCD Loan, which lien shall be subordinate to the Deed of Trust.

**1.112 HCD Restrictions (Senior).** That certain [Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing] executed by Borrower for the benefit of HCD in connection with the HCD Loan, which lien shall be senior to the Deed of Trust.

**1.113 HCD Subordination Agreement.** A subordination agreement in form and substance satisfactory to Bank, to be executed by HCD and Borrower, pursuant to which HCD shall unconditionally subordinate the lien and effect of the HCD Deed of Trust and the HCD Restrictions (Junior) to the lien and effect of the Deed of Trust.

**1.114 Hedge.** As defined in Section 7.49.

**1.115 Hedge Documents.** As defined in Section 7.49.

**1.116 Housing Authority.** The Housing Authority of the County of Santa Clara.

**1.117 Improvements.** A low-income multifamily and special needs apartment project consisting of seventy-one (71) units (including one (1) manager's unit) with ground floor commercial space known as Quetzal Gardens Apartments.

**1.118 Indemnified Parties.** Collectively Governmental Lender, Fiscal Agent and Bank and each of their respective officers, members governing members or partners, directors, employees, attorneys and agents, past, present and future.

**1.119 Indemnity Agreement.** Any Indemnity Agreement entered into in connection with the Borrower Loan.

**1.120 Initial Disbursement.** The initial Advance made by Governmental Lender to Borrower pursuant to this Agreement.

**1.121 Initial Maturity Date.** As defined in Section 2.6.

**1.122 Initial Outside Conversion Date.** As defined in Section 2.6.

**1.123 Interest Change Date.** The First Payment Date and the first day of each calendar month thereafter.

**1.124 Interest Period.** The period of time from one Interest Change Date to (but excluding) the next Interest Change Date or the Maturity Date, as the case may be.

**1.125 Interest Reserve.** The portion of the Project Budget allocated for the payment of interest due under this Agreement.

**1.126 Late Charge.** An amount equal to 6% of any delinquent payment of amounts due from Borrower under the Borrower Loan Documents.

**1.127 Leasehold Estate.** The leasehold estate created under the Ground Lease.

**1.128 Leases.** All leases of any portion of the Property (other than the Ground Lease) and all amendments, guaranties and subleases relating thereto.

**1.129 LIBOR Rate.** As of any given date, a per annum rate of interest equal to the greater of (i) zero percent (0.00%) and (ii) the rate for U.S. Dollar deposits for a period of one month or, for the Stub Period, for a period equal to the number of days in the Stub Period which appears on the Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on the day that is two Business Days preceding such date. Should the LIBOR Rate cease to be available for any reason, then said rate shall be replaced by a rate which, in the sole discretion of Bank, most closely approximates the unavailable LIBOR Rate.

**1.130 Liquid Assets.** Immediately available cash, bank deposits, accounts and mutual funds; obligations of or guaranteed by the U.S. government or an agency thereof; and stocks, bonds and other debt instruments regularly traded on the New York, American or NASDAQ stock exchange which can be readily converted into cash.

**1.131 Loan Fee.** \$[161,037.50].

**1.132 Loan Party.** Any general partner, managing member, joint venturer, trustee or trustor of Borrower, as applicable and any Guarantor.

**1.133 Loan-to-Value Ratio.** The ratio of (i) then outstanding indebtedness in connection with the Borrower Loan to (ii) the Appraised Value of the Property.

**1.134 London Banking Day.** A day in which dealings in U.S. Dollar deposits in London, England may be carried on by Bank.

**1.135 Margin.** 1.35% during the Construction Phase and 1.75% during the Permanent Phase.

**1.136 Maturity Date.** May 1, 2037.

**1.137 Net Operating Income.** Gross Operating Income less Operating Expenses.

**1.138 New York Banking Day.** A day which is not a Saturday or Sunday on which banks in New York City, New York are open for business for the funding of corporate loans.

**1.139 Offsite Materials.** Materials to be incorporated into the Improvements or used in connection with the construction of the Improvements that are stored at a location other than the Real Property.

**1.140 Onsite Materials.** Materials to be incorporated into the Improvements or used in connection with the construction of the Improvements that are stored on the Real Property.

**1.141 Operating Expenses.** The following expenses to the extent that such expenses are reasonable in amount and customary for properties of a type similar to the Property, as determined by Bank in its sole discretion: (A) real property taxes and assessments imposed upon the Property, (B) premiums for insurance of the Property, including casualty and liability insurance, (C) reserves for capital expenditures, leasing commissions and tenant improvements, as determined by Bank in its business judgment, reasonably exercised, and (D) operating expenses actually incurred by Borrower in connection with the management, operation, cleaning, leasing, maintenance and repair of the Property or any part thereof. Operating Expenses shall be calculated on an accrual basis and shall not include any interest or principal payments due in respect of the Borrower Loan or any allowance for depreciation and similar noncash charges.

**1.142 Operating Statement.** A monthly, quarterly or annual statement that shows in detail the amounts and sources of Gross Operating Income, the amounts and nature of Operating Expenses, and Net Operating Income, in each case for the preceding calendar month, quarter or year. The Operating Statement shall be prepared in accordance with accounting practices and principles acceptable to Bank and consistently applied and in a form satisfactory to Bank.

**1.143 Outside Conversion Date.** [May 1, 2022], unless extended pursuant to Sections 2.6 or 2.7 below.

**1.144 Partnership Agreement.** Borrower's agreement of limited partnership, as the same may be amended from time to time.

**1.145 Paydown Amount.** The amount by which (a) the current outstanding principal amount of the Borrower Note, plus all accrued but unpaid interest thereon, exceeds (b) the lesser of (i) the Projected Permanent Phase Loan Amount (ii) the maximum outstanding principal balance of the Borrower Loan in order for the Property to satisfy the Debt Coverage Ratio pursuant to Section (o) of Exhibit D as of the Conversion Date and (iii) the notional amount of the Hedge for the Note as of the Conversion Date, which Paydown Amount shall be applied towards the payment of principal balance outstanding and accrued and unpaid interest under the Borrower Loan and all other amounts due and owing under the Borrower Loan Documents and the Funding Loan Documents.

**1.146 Permanent Phase.** The period from the Conversion Date and ending on the Maturity Date.

**1.147 Permitted Liens.** Any easements and restrictions listed in a schedule of exceptions to coverage in the Title Policy as required by the Borrower Loan Documents.

**1.148 Person.** Any natural person or entity, including any corporation, partnership, joint venture, limited liability company, trust, trustee, unincorporated organization or Governmental Authority.

**1.149 Personal Property.** Any tangible or intangible personal property described in the Deed of Trust or Security Documents that is security for the Borrower Loan.

**1.150 Plans.** The final plans and specifications for construction of the Improvements (including any applicable general conditions), prepared by Architect and approved by Bank as required herein, and all amendments and modifications thereof made pursuant to Change Orders.

**1.151 Preliminary Reservation.** That certain Tax Exempt Reservation Letter dated \_\_\_\_\_, 20\_\_ [CHECK], issued by the Allocation Committee.

**1.152 Project Budget.** The cost itemization (set forth in Exhibit B-1 hereto) of the total amount needed by Borrower to construct the Improvements and to perform Borrower's other obligations under the Borrower Loan Documents, which itemization may be amended from time to time in accordance with this Agreement.

**1.153 Project Completion.** The date of completion of construction of the Project and issuance of all licenses and permits necessary for the occupancy and use of the Units such that the Project shall be considered "placed in service" for purposes of the provisions of Section 42 of the Code, which date of completion shall not be later than the Completion Date.

**1.154 Projected Permanent Phase Loan Amount.** \$[10,362,000].

**1.155 Property or Project.** The Leasehold Estate, the Improvements and the Personal Property.

**1.156 Qualified Allocation Plan.** The Qualified Allocation Plan adopted by the Allocation Committee from time to time in accordance with the provisions of Section 42(m) of the Code.

**1.157 R&T Code.** The California Revenue and Taxation Code, as amended from time to time thereto. Any reference to a particular provision of the R&T Code shall include any amendment of such provision.

**1.158 Real Property.** That certain real property described in Exhibit A hereto.

**1.159 Recorded Documents.** The Regulatory Agreements, the Deed of Trust, the Deed of Trust Assignment, the Subordination Agreements, the AHP Deed of Trust, the City Deed of Trust, the County Deed of Trust, the HCD Deed of Trust (after the same has been fully executed), the City Restrictions, the County Restrictions, and the HCD Restrictions (after the same have been fully executed).

**1.160 Regulatory Agreements.** All regulatory agreements and restrictions (including, without limitation, the Tax-Exempt Regulatory Agreement, the Extended Use Agreement, the City Restrictions, the County Restrictions, and the HCD Restrictions (after the same has been fully executed)), now or hereafter encumbering the Property setting forth restrictions with respect to the leasing, maintenance and use of the Units.

**1.161 Rent Restrictions.** The occupancy and rent restrictions contained in the Regulatory Agreements, the HAP Contract and the AHP Documents.

**1.162 Second Extended Outside Conversion Date.** As defined in Section 2.7.

**1.163 Second Extension Term.** As defined in Section 2.7.

**1.164 Security Documents.** Any agreements granting a security interest in collateral securing the Borrower Loan and/or any Hedge provided by Bank, other than the Deed of Trust, including without limitation, assignments and consents to assignments of the Architect's Agreement, Construction Contract, if any, Plans, any property management agreement or asset management agreement, the Assignment of Tax Credits and Partnership Interests, the Assignment of Hedge (if any), the Assignment of Partnership Interest (GP), the Assignment of AHAP Contract, and the Assignment of HAP Contract.

**1.165 Set Aside Letter.** Any letter or letters to any Governmental Authority or Surety whereby Bank agrees to allocate proceeds of the Borrower Loan for construction of Bonded Work.

**1.166 Single Change Order Limit.** \$50,000. [CHECK]

**1.167 Stub Period.** The period from the Funding Date through (but excluding) the first day of the calendar month following such date.

**1.168 Subordinate Documents.** The AHP Documents, the City Documents, the County Documents, and the HCD Documents (after the HCD Documents have been fully executed).

**1.169 Subordinate Lenders.** AHP Lender, the City, the County, and HCD.

**1.170 Subordinate Loans.** The AHP Loan, the City Loan, the County Loan, and the HCD Loan (when made).

**1.171 Subordination Agreement(s).** The AHP Subordination Agreement, the City Subordination Agreement, the County Subordination Agreement, and the HCD Subordination Agreement.

**1.172 Surety.** The bonding company that issues the bonds covering the Bonded Work.

**1.173 Tax Certificate.** As defined in the Funding Loan Agreement.

**1.174 Tax Counsel.** As defined in the Funding Loan Agreement.

**1.175 Tax Credit Allocation Documents.** The Tax Credit Application, the Preliminary Reservation, IRS Form 8609 to be hereafter executed by the Allocation Committee and all other documents

heretofore and hereafter submitted to, and received by the Borrower from, the Allocation Committee, and all amendments, extensions and modifications thereto.

**1.176 Tax Credit Application.** The 2019 Low-Income Housing Tax Credit Application submitted to the Allocation Committee to apply for Tax Credits with respect to the Project.

**1.177 Tax Credit Investor.** Collectively, Red Stone Equity – 2019 CA Regional Fund, L.P., a Delaware limited partnership, and Red Stone Equity Manager, LLC, a Delaware limited liability company, and their permitted successors and/or assigns.

**1.178 Tax Credit Investor Estoppel Certificate.** An estoppel certificate duly executed by Tax Credit Investor, providing such certifications as Bank may require with respect to the Tax Credit Investor's obligation to make its capital contributions.

**1.179 Tax Credits.** Low income housing tax credits to be allocated under Section 42 of the Code pursuant to the terms of the Tax Credit Documents.

**1.180 Tax-Exempt Regulatory Agreement.** The "Regulatory Agreement", as defined in the Funding Loan Agreement.

**1.181 Title Insurer.** Old Republic Title Company.

**1.182 Title Policy.** An ALTA LP-10 Policy of Title Insurance or its equivalent acceptable to Bank, naming Governmental Lender and Bank as insured, with a liability limit of not less than the amount of the Borrower Loan, issued by Title Insurer, insuring that the Deed of Trust constitutes a valid first lien on the Leasehold Estate and Improvements, with only such exceptions from its coverage as shall have been approved in writing by Bank, with such reinsurance or coinsurance agreements or endorsements to such policy as Bank may require.

**1.183 Transfer.** Any sale, lease or other transfer of any interest to any other Person.

**1.184 Unit(s).** The seventy-one (71) apartment units, including one (1) manager's unit, constituting the Improvements.

**1.185 Variable Rate.** A rate of Interest which bears interest with reference to a LIBOR Rate, pursuant to Section 3.1.2.

**1.186 Variable Rate Principal.** The outstanding principal balance of the Borrower Loan that is bearing interest at a Variable Rate.

## **2. BORROWER LOAN.**

**2.1 Purpose.** The purpose of the Borrower Loan is to finance the construction of the Improvements and other costs related thereto and to provide permanent financing for the Project.

**2.2 Loan Terms and Conditions.** Subject to the terms and conditions contained in this Agreement, as may be modified by the provisions of Exhibit C and Sections 3.3 and 3.4 of the Funding Loan Agreement, Governmental Lender agrees to make the Borrower Loan to Borrower. The repayment of all amounts due in connection with the Borrower Loan shall be secured by, among other things, the Deed of Trust, the Security Documents and such other collateral as may be required by Bank. Interest shall accrue and principal and interest shall be payable in accordance with the terms of this Agreement.

**2.3 Loan Fee.** Borrower shall pay the Loan Fee to Bank in immediately available funds on or before the Closing Date. The Loan Fee shall be nonrefundable.

**2.4 Full Payment and Reconveyance.** Upon Governmental Lender's and Bank's receipt, as applicable, of all sums owing and outstanding under the Borrower Loan Documents, the Funding Loan Documents and under any other note or notes or any other obligation secured by the Deed of Trust, Bank shall issue a full reconveyance of the Property and Improvements from the lien of the Deed of Trust; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Bank shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Borrower Loan Documents and the Funding Loan Documents; and (b) Bank shall have received a written release satisfactory to Bank of any Set Aside Letter, letter of credit or other form of undertaking that Bank has issued to any Surety, Governmental Authority or any other party in connection with the Borrower Loan and/or the Property. As of the earlier of the last day of disbursement of the Funding Loan under Section 3.4(e) of the Funding Loan Agreement, or date of repayment in full of the Borrower Loan, Governmental Lender's obligation to make further disbursements under the Borrower Loan shall terminate as to any portion of the Borrower Loan undisbursed, and any commitment of Governmental Lender to lend any undisbursed portion of the Borrower Loan shall be cancelled.

**2.5 Assignment of Borrower Loan Documents to Bank.** Borrower acknowledges that the Governmental Lender has made an assignment to the Bank of all right, title and interest of the Governmental Lender in this Borrower Loan Agreement (except for the Reserved Rights, as defined in the Funding Loan Agreement), the Borrower Note, the Deed of Trust and the other Borrower Loan Documents and has appointed the Bank as its agent to collect payments from the Borrower with respect to the Borrower Loan and to take all actions on behalf of Governmental Lender (other than with respect to the Reserved Rights) with respect to the Borrower Loan and the Borrower Loan Documents. Borrower hereby consents to all such assignments and the appointment of Bank as agent for the Governmental Lender.

**2.6 First Extension.** Borrower shall have the option to extend the Outside Conversion Date (for purposes of this Section, "Initial Outside Conversion Date") for an additional three (3) months ("First Extension Term"), to and including [August 1, 2022] ("First Extended Outside Conversion Date"), upon satisfaction of all of the following conditions, as determined by Bank:

**2.6.1** Borrower shall provide Bank with Borrower's written request to extend the term of the Borrower Loan not less than ninety (90) days prior to the Initial Outside Conversion Date.

**2.6.2** At the time of Bank's receipt of Borrower's written request to extend the term of the Borrower Loan, and as of the Initial Outside Conversion Date, no Event of Default shall have occurred and be continuing.

**2.6.3** There shall have been no substantial deterioration in the financial condition of Borrower or any Loan Party, as determined by Bank in Bank's sole discretion.

**2.6.4** Borrower and any Loan Party shall have executed such documents as Bank may require in connection with such extension, including any amendments to the Borrower Loan Documents.

**2.6.5** Neither Borrower nor any Loan Party shall be in default under any promissory note, deed of trust, security agreement, guaranty or other agreement between Bank and any such party, and no event shall have occurred which would constitute a default or event of default thereunder.

**2.6.6** Borrower shall have paid to Bank a loan extension fee in the amount of \$[32,207.50].

**2.6.7** Borrower shall have provided Bank with evidence that the construction of the Improvements shall be substantially completed in accordance with the Plans, as determined by Bank in its sole discretion, as of the Initial Outside Conversion Date.

**2.6.8** Bank shall have the option, in its sole discretion, to re-balance the Interest Reserve to assure that there are sufficient funds in the Interest Reserve to pay the interest required under the terms of the Borrower Note during the First Extension Term. In the event the Bank determines that the funds in the Interest Reserve are insufficient, Borrower shall pay into the Borrower's Funds Account such amount as is necessary, as determined by Bank in its sole discretion, to provide adequate funds to pay, at a minimum, the interest required under the terms of the Borrower Note during the First Extension Term.

**2.6.9** Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.48, which shall provide for the Borrower to pay a fixed rate of interest no greater than (or otherwise protects against the interest rate exceeding) [ ] [CHECK]% (including the Margin), on an amount not less than the Projected Permanent Phase Loan Amount for the period commencing no later than the First Extended Outside Conversion Date and terminating on the Maturity Date.

**2.6.10** From and after the Initial Outside Conversion Date, the interest payable under the Borrower Note during the First Extension Term shall continue to accrue at the rate or rates specified in Section 3.1.2(a) and monthly payments of interest only shall continue to be payable as specified in Section 3.1.3(a).

**2.6.11** Borrower shall provide Bank with written evidence of HCD's consent to any such extension, including an amendment to the HCD Loan Agreement evidencing the extension of the date by which funds are to be disbursed thereunder to not earlier than the First Extended Conversion Date.

**2.6.12** Borrower shall pay all costs and expenses incurred by Bank in connection with the First Extension Term, including without limitation, extension fees, documentation and/or recording fees, if any, and the cost of any title endorsements required by Bank.

**2.7 Second Extension.** Borrower shall have the option to extend the First Outside Conversion Date for an additional three (3) months ("Second Extension Term"), to and including [November 1, 2022] ("Second Extended Outside Conversion Date"), upon satisfaction of all of the following conditions, as determined by Bank:

**2.7.1** Borrower shall provide Bank with Borrower's written request to extend the term of the Borrower Loan not less than ninety (90) days prior to the First Extended Outside Conversion Date.

**2.7.2** At the time of Bank's receipt of Borrower's written request to extend the term of the Borrower Loan, and as of the First Extended Outside Conversion Date, no Event of Default shall have occurred and be continuing.

**2.7.3** There shall have been no substantial deterioration in the financial condition of Borrower or any Loan Party, as determined by Bank in Bank's sole discretion.

**2.7.4** Borrower and any Loan Party shall have executed such documents as Bank may require in connection with such extension, including any amendments to the Borrower Loan Documents.

**2.7.5** Neither Borrower nor any Loan Party shall be in default under any promissory note, deed of trust, security agreement, guaranty or other agreement between Bank and any such party, and no event shall have occurred which would constitute a default or event of default thereunder.

**2.7.6** Borrower shall have paid to Bank a loan extension fee in the amount of \$[32,207.50].

**2.7.7** Borrower shall have provided Bank with evidence that the construction of the Improvements shall be substantially completed in accordance with the Plans, as determined by Bank in its sole discretion, as of the First Extended Outside Conversion Date.

**2.7.8** Bank shall have the option, in its sole discretion, to re-balance the Interest Reserve to assure that there are sufficient funds in the Interest Reserve to pay the interest required under the terms of the Borrower Note during the Second Extension Term. In the event the Bank determines that the funds in the Interest Reserve are insufficient, Borrower shall pay into the Borrower's Funds Account such amount as is necessary, as determined by Bank in its sole discretion, to provide adequate funds to pay, at a minimum, the interest required under the terms of the Borrower Note during the Second Extension Term.

**2.7.9** Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.48, which shall provide for the Borrower to pay a fixed rate of interest no greater than (or otherwise protects against the interest rate exceeding) [ ] [CHECK]% (including the Margin), on an amount not less than the Projected Permanent Phase Loan Amount for the period commencing no later than the Second Extended Outside Conversion Date and terminating on the Maturity Date.

**2.7.10** From and after the First Extended Outside Conversion Date, the interest payable under the Borrower Note during the Second Extension Term shall continue to accrue at the rate or rates specified in Section 3.1.2(a) and monthly payments of interest only shall continue to be payable as specified in Section 3.1.3(a).

**2.7.11** Borrower shall provide Bank with written evidence of HCD's consent to any such extension, including an amendment to the HCD Loan Agreement evidencing the extension of the date by which funds are to be disbursed thereunder to not earlier than the Second Extended Conversion Date.

**2.7.12** Borrower shall pay all costs and expenses incurred by Bank in connection with the Second Extension Term, including without limitation, extension fees, documentation and/or recording fees, if any, and the cost of any title endorsements required by Bank.

### **3. PAYMENTS; CONVERSION.**

#### **3.1 Payments.**

**3.1.1 General Obligation.** To induce Governmental Lender to issue the Funding Loan Note, Borrower shall pay to Bank all amounts, including principal, interest and premium (if any) that become due and payable on the Funding Loan Note, as and when such amounts become due and payable under the Funding Loan Note. Without limitation on the foregoing, Borrower shall also pay to Bank when due all other amounts described in this Agreement, as and when due and payable under this Agreement.

#### **3.1.2 Interest.**

(a) At all times from and after the Funding Date to (but excluding) the Conversion Date, the outstanding principal balance of the Borrower Loan shall accrue interest at a rate which is 79% of the LIBOR Rate plus the Margin (applicable during the Construction Phase) for the then current Interest Period. The Variable Rate for the next Interest Period shall change on each Interest Change Date based on changes in the LIBOR Rate. There is no limit on the amount the Variable Rate may increase or decrease during the term of the Borrower Loan.

(b) At all times from and after the Conversion Date, the outstanding principal balance of the Borrower Loan shall accrue interest at a rate which is 79% of the LIBOR Rate plus the Margin (applicable during the Permanent Phase) for the then current Interest Period. The Variable Rate for the next Interest Period shall change on each Interest Change Date based on changes in the LIBOR Rate. There is no limit on the amount the Variable Rate may increase or decrease during the term of the Borrower Loan.

(c) At all times after the occurrence and during the continuance of an Event of Default, all principal outstanding under the Borrower Note shall accrue interest at the Default Rate.



### **3.1.3 Monthly Payments.**

(a) Commencing on the First Payment Date and continuing on the 1st day of each calendar month thereafter through and including the Outside Conversion Date, payments in respect of the Borrower Loan shall be interest only, in arrears, on the outstanding principal of the Borrower Note at the Variable Rate. Interest shall be calculated on the basis of a year of 360 days, for actual days elapsed, prior to the Outside Conversion Date.

(b) Commencing on the Amortization Date and on the 1st day of each calendar month thereafter through the Maturity Date, Borrower shall pay to Bank monthly installments of principal with respect to the Borrower Note as set forth on Schedule 1 to be attached hereto and incorporated herein by this reference (the "Principal Payments"), plus interest accrued for the applicable Interest Period on the principal balance outstanding from time to time on the Borrower Note at the Variable Rate. Said principal and interest payments are hereinafter collectively referred to as the "Regular Payments" and are subject to change as and when the Variable Rate changes. The Regular Payments will be applied first to accrued but unpaid interest then due, and then to principal. A payment will be treated as made on the date it is received. At Conversion, Schedule 1 shall be prepared by Bank and attached to this Agreement and shall consist of a schedule of the monthly installments of principal required to fully amortize the outstanding principal balance of the Borrower Note owing on the Conversion Date, assuming equal monthly payments of principal and interest, an amortization period of three hundred (300) months and a fixed rate of interest equal to the fixed rate or maximum interest rate of the Hedge in effect as of the Conversion Date. Bank shall provide Borrower with a copy of Schedule 1 once it is prepared by Bank, but the effectiveness and date of such payment shall not be affected by such notice or lack thereof. Bank's determination of said Regular Payments shall be conclusive absent manifest error. All computations of interest shall be made on the basis of a year of 360 days, for actual days elapsed. On the Maturity Date, all principal and accrued interest then outstanding shall be immediately due and payable.

### **3.2 Conversion; Termination.**

**3.2.1** Not later than 30 days prior to the earlier to occur of the proposed Conversion Date or the Outside Conversion Date, Borrower shall deliver the Conversion Election Notice to Bank. The Conversion Election Notice shall be accompanied by (a) a written certification by Borrower to Bank that all of the Conditions to Conversion have been fully satisfied; (b) a rent roll covering the Property for each of the three full calendar months immediately preceding the date of the Conversion Election Notice, certified by Borrower as true, correct and complete; and (c) operating statements for the Property for each of such three calendar months, in the form required by Bank, and certified by Borrower to be true, correct and complete.

**3.2.2** The Conditions to Conversion specified in Exhibit D shall be applicable to the Conversion. Bank shall have the right to waive any Condition to Conversion set forth in Exhibit D in Bank's sole and absolute discretion.

**3.2.3** If, based upon the information delivered pursuant to Section 3.2.1 and such other information as Bank may require as evidence of satisfaction of the Conditions to Conversion, Bank determines that the Conditions to Conversion have been fully satisfied, Bank shall deliver the Conversion Notice, which Conversion Notice shall state the Conversion Date and a copy of Schedule "1" to be attached hereto setting forth the monthly installments of principal required to be paid by Borrower under the Borrower Note, as more particularly set forth in Sections 3.1.3(b) above.

**3.2.4** Upon Conversion (and so long as all Conditions to Conversion are satisfied) the following documents shall be deemed automatically terminated and shall have no further force or effect without any further action by any Loan Party: (i) the Guaranty (except for the Indemnity Agreement); (ii) the Assignment of Tax Credits and Partnership Interests, and (iii) the Assignment of Partnership Interest (GP).

**3.2.5** If the Conditions to Conversion have not been fully satisfied prior to the Outside Conversion Date, as such date may be extended in accordance with this Agreement, Borrower shall pay to Bank, on the Outside Conversion Date, the entire outstanding principal balance of the Borrower Loan, together with all accrued and unpaid interest thereon and other accrued and unpaid fees, costs and expenses owing under the Borrower Loan Documents and the Funding Loan Documents.

**3.2.6 Non-Recourse After Conversion Date.** From and after the Conversion Date, Governmental Lender and Bank agree that Governmental Lender's and Bank's recovery against Borrower in the event of a default under this Agreement, the Borrower Note or under any of the other Borrower Loan Documents shall be limited solely to, and Governmental Lender and Bank shall only proceed against, the Trust Estate (as defined in the Deed of Trust), together with the rents, issues, profits and income therefrom and proceeds and products thereof, and any other collateral given as security for Borrower's performance under the Borrower Loan Documents, and in no event shall (i) Borrower be personally liable for the payment of the Borrower Note or for the payment of any deficiency established upon foreclosure and the sale of the Trust Estate, or (ii) any other assets of Borrower (or any general partner of Borrower) be subject to levy, execution or other enforcement procedure in connection with any such default. Notwithstanding the foregoing, Borrower (and each general partner of Borrower) shall be fully and personally liable to Governmental Lender and Bank for the costs or damages arising from any of the following:

- (a) gross negligence, fraud, willful misrepresentation or waste by Borrower, to the full extent of Governmental Lender's and Bank's loss attributable thereto;
- (b) any inaccuracy in or breach of any representation or warranty pertaining to any Hazardous Substances (as that term is defined in that certain Environmental Compliance Agreement (the "ECA") executed in favor of Governmental Lender and Bank by Borrower concurrently herewith), any failure in the due, prompt and complete observance and performance of any covenant or other obligation imposed under or pursuant to the ECA, or the presence of any Hazardous Substance on, under or about the Trust Estate, whenever arising;
- (c) failure to pay taxes, assessments or other charges which can create liens on any portion of the Trust Estate (to the full extent of any such taxes, assessments or other charges);
- (d) any loss which would have been covered by insurance required to be maintained under the terms of any of the Borrower Loan Documents, which Borrower failed to maintain;
- (e) failure to deliver to Bank any funds which should have been paid to Bank under the terms of the Borrower Loan Documents or the distribution of earnings or income from the Trust Estate in violation of the Borrower Loan Documents; or
- (f) any loss resulting from any claim or cause of action by a contractor, material supplier or other person or entity entitled to file a mechanic's lien against the Trust Estate.

In addition, Borrower and each General Partner shall be fully and personally liable to Governmental Lender and Bank for the full amount of the Borrower Loan and all other obligations evidenced by the Borrower Loan Documents in the event (i) all or any part of the Trust Estate, other assets of Borrower or any ownership interest in Borrower is transferred in violation of the Borrower Loan Documents; (ii) any voluntary or involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, arrangement, debt adjustment or debtor relief is commenced by or against Borrower or by or against any owner of the Property and, as to involuntary proceedings, is not dismissed within sixty (60) days; or (iii) Governmental Lender's or Bank's exercise of its rights and remedies under the Borrower Loan Documents is hindered, delayed, interfered with or prejudiced by or as a result of any act, omission, fraud or misrepresentation of Borrower or any other party now or hereafter liable for any part of the Borrower Loan.

The provisions hereof shall not be deemed to constitute a waiver of any obligation of Borrower or any other party or limitation of any kind of any right of Governmental Lender or Bank at law or equity or

under any guaranty or other Borrower Loan Documents, provided that the assertion by Governmental Lender or Bank of any such right shall not result in a monetary claim upon the general unsecured assets of Borrower except as provided herein.

**3.3 Maturity Date.** All unpaid principal and interest on the Borrower Loan and other amounts due under the Borrower Loan Documents and the Funding Loan Documents shall be due and payable in full on the Maturity Date, as such date may be extended or accelerated.

**3.4 Application of Payments.** All payments and prepayments received by Governmental Lender or Bank pursuant to the terms hereof shall be applied in the following manner: first, to the payment of any Late Charge then due; second to the payment of all expenses, charges, costs and fees (including, but not limited to, the Prepayment Fee) incurred by or payable to Governmental Lender or Bank by Borrower pursuant to the terms of the Borrower Loan Documents (in such order and manner as Bank, in its sole discretion, may elect); third to the payment of all interest accrued to the date of such payment; and fourth to the payment of principal. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of an Event of Default, all amounts received by Governmental Lender and Bank from any party shall be applied in such order as Bank in its sole discretion, may elect.

**3.5 Acceleration.** If any of the payments required by the terms hereof shall not be paid when due and such failure shall continue beyond any applicable notice and cure periods, or if the payment due on the Maturity Date is not paid when due, whether by acceleration or otherwise, or if an Event of Default occurs, then, or at any time thereafter, the whole of the unpaid principal and interest owing on the Borrower Loan shall, at the option of Bank and without notice, become immediately due and payable. This acceleration option may be exercised at any time after any such event and the acceptance of one or more installments or other payments from any Person thereafter shall not constitute a waiver of Bank's acceleration option. Bank's failure to exercise such acceleration option in connection with any particular event or series of events shall not be construed as a waiver of the provisions hereof as regards such events or any subsequent events. The other Borrower Loan Documents may contain provisions that provide for the automatic acceleration of amounts owing in connection with the Borrower Loan upon the occurrence of certain specified events. Bank shall have, and be entitled to exercise, upon the occurrence of any Event of Default or other event described above, all rights and remedies available to Bank hereunder, under the other Borrower Loan Documents or Funding Loan Documents or at law or in equity. All such rights and remedies shall be cumulative.

**3.6 Late Charge; Default Interest.** Borrower recognizes that any default by Borrower in making the payments required under the Borrower Loan Documents when due will result in Governmental Lender and Bank incurring additional expense in servicing the Borrower Loan, in loss of the use of the money due and in frustration of meeting commitments under the Funding Loan Documents. Borrower agrees that, if for any reason Borrower fails to pay when due any payment due under this Agreement or under any of the other Borrower Loan Documents, any amount advanced under the Deed of Trust or the amount due on the Maturity Date, or the accelerated Maturity Date, whichever shall first occur, Bank shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore agrees that a reasonable estimate of such damages to Bank is as follows:

**3.6.1** In the event Borrower fails to pay any installment of principal and interest (other than payment on the Maturity Date) within ten days after the same is due, then Borrower shall pay to Bank a Late Charge.

**3.6.2** In the event Borrower fails to reimburse Bank for any amount advanced under the Deed of Trust within ten days after written notice of such advance is made by Bank to Borrower, then such unreimbursed amount shall thereafter bear interest at the Default Rate until paid, such interest to be compounded annually.

**3.6.3** In the event the payment of principal and accrued but unpaid interest due on the Maturity Date, or the accelerated Maturity Date, as applicable, is not made in full when due, then such amounts shall thereafter bear interest at the Default Rate, until paid, such interest to be compounded annually.

**3.7 Prepayment.** Pursuant to the terms of this Section 3.7, the Borrower Loan may be prepaid by Borrower when and to the extent that the Funding Loan Note is susceptible to prepayment under the Funding Loan Documents, provided that Borrower shall in no event voluntarily or involuntarily prepay the Borrower Loan in whole or in part unless Borrower pays to Bank, concurrently with such prepayment, a prepayment fee as calculated below.

**3.7.1 Variable Rate Principal.** Any Variable Rate Principal may be prepaid prior to the scheduled payment date, whether voluntary or involuntary, in whole or in part, provided Borrower has given Bank not less than five (5) business days prior written notice of Borrower's intention to make such prepayment and pays to Bank the prepayment fee due as a result. The prepayment fee shall be an amount equal to the present value of the product of: (i) the difference (but not less than zero) between (a) the Variable Rate applicable to the principal amount which is being prepaid, and (b) the return which Bank could obtain if it used the amount of such prepayment of principal to purchase a bid price regularly quoted securities issued by the United States having a Maturity Date most closely coinciding with the last day of the relevant Interest Period and such securities were held by Bank until the last day of the relevant Interest Period ("Yield Rate"); (ii) a fraction, the numerator of which is the number of days in the period between the date of prepayment and the last day of the relevant Interest Period, and the denominator of which is 360, and (iii) the amount of principal so prepaid. The present value shall be determined by discounting the above product to present value using the Yield Rate as the annual discount factor. Bank shall provide Borrower a statement of the amount payable on account of prepayment. Borrower acknowledges that (i) Bank establishes a Variable Rate upon the understanding that it apply to the Variable Rate Principal for the entire Interest Period, and (ii) Governmental Lender would not lend to Borrower at a Variable Rate without Debtor's express agreement to pay the prepayment fee described above.

**3.7.2 No Prepayment Fee Due.** Notwithstanding Section 3.7.1 above, no prepayment fee shall be payable (i) in connection with the prepayment of Variable Rate Principal in connection with the prepayment of principal during the ninety (90) day period immediately preceding the Outside Conversion Date or Maturity Date.

**3.7.3 No Refund.** In no event shall Bank be obligated to make any payment or refund to Borrower, nor shall Borrower be entitled to any setoff or other claim against Bank, should the return which Bank could obtain under the prepayment formula exceed the interest that Governmental Lender would have received if no prepayment had occurred.

**3.7.4 Payment of Accrued Interest.** All prepayments shall include payment of accrued interest on the principal amount so prepaid, shall be applied to payment of interest before application to principal, and shall be applied to the most remote principal installment or installments then unpaid (i.e., the principal balance due on the Maturity Date and then against installments due closest to the Maturity Date).

**3.7.5 Involuntary Prepayment.** Such prepayment fee shall also be payable if prepayment occurs as the result of any involuntary prepayment (e.g., proceeds of insurance or condemnation or any prepayment required in order to satisfy the Conditions to Conversion) or the acceleration of the principal hereof by Bank because of any default by Borrower (including any transfer or conveyance of any right, title or interest in the real property encumbered by the Deed of Trust) that gives Bank the right to accelerate the maturity of the Borrower Loan pursuant to the terms of the Deed of Trust. If, following any such acceleration, all or any portion of the unpaid principal is satisfied, whether through sale of the property encumbered by the Deed of Trust or other agreement securing the Borrower Loan at a foreclosure held thereunder or through the tender of payment at any time following such acceleration, but prior to such a foreclosure sale, then such satisfaction of principal shall be deemed an evasion of the prepayment provisions hereof, and Bank shall, automatically and without notice or demand, be entitled to

receive, concurrently with such satisfaction of principal the prepayment fee set forth above, and the obligation to pay such prepayment fee shall be added to the principal hereof.

**BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT GOVERNMENTAL LENDER WOULD NOT LEND TO BORROWER THE BORROWER LOAN EVIDENCED BY THE BORROWER NOTE WITHOUT BORROWER'S AGREEMENT TO PAY BANK A PREPAYMENT FEE AS SET FORTH ABOVE. BORROWER EXPRESSLY WAIVES ANY RIGHT UNDER CALIFORNIA CIVIL CODE SECTION 2954.10 OR OTHERWISE TO PREPAY THE BORROWER LOAN WITHOUT A PREPAYMENT FEE AS HEREINABOVE SET FORTH. BORROWER ACKNOWLEDGES THAT PREPAYMENT OF THE BORROWER LOAN MAY RESULT IN GOVERNMENTAL LENDER AND BANK INCURRING ADDITIONAL COSTS, EXPENSES OR LIABILITIES. BORROWER THEREFORE AGREES THAT THE PREPAYMENT FEE HEREIN PROVIDED FOR REPRESENTS A REASONABLE ESTIMATE OF THE PREPAYMENT COSTS, EXPENSES OR LIABILITIES GOVERNMENTAL LENDER AND BANK MAY INCUR ON A PREPAYMENT. BORROWER AGREES THAT GOVERNMENTAL LENDER'S WILLINGNESS TO OFFER THE VARIABLE RATE DESCRIBED ABOVE TO BORROWER IS SUFFICIENT AND INDEPENDENT CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY GOVERNMENTAL LENDER AND BANK FOR THIS WAIVER. BORROWER UNDERSTANDS THAT GOVERNMENTAL LENDER WOULD NOT OFFER SUCH AN INTEREST RATE TO BORROWER ABSENT THIS WAIVER. BORROWER HAS CAUSED THOSE PERSONS SIGNING THIS AGREEMENT ON ITS BEHALF TO SEPARATELY INITIAL THIS PARAGRAPH BY PLACING THEIR INITIALS BELOW:**

**BORROWER INITIALS HERE:** \_\_\_\_\_

**3.7.6 Certification.** A certificate as to the amount of any prepayment fee payable under this Section, setting forth the basis for such fee, prepared by Bank and submitted to Borrower shall be conclusive as to the matters set forth therein, and the Borrower Loan shall not be deemed to have been fully paid or satisfied until such fee shall have been paid.

**3.7.7 Effect of Prepayment on Hedge.** Borrower and Bank hereby agree that, in accordance with and subject to the terms of any Hedge Documents, any Hedge entered into between Borrower and Bank in connection with the Borrower Loan shall, upon the making of any prepayment of amounts outstanding under the Borrower Loan, be subject to an Additional Termination Event (as defined in such Hedge Documents) and may be terminated as and to the extent more particularly provided in the documents and agreements evidencing such Hedge. Any amounts (which may be substantial) payable by Borrower to Bank, or by Bank to Borrower in respect of such full or partial termination of such Hedge shall be determined under the terms and conditions of the Hedge Documents relating to such Hedge.

**3.8 Additional Fee Payment Obligations.** All payments to fund taxes, insurance or any other escrow or reserve required to be established, funded or created pursuant to any Borrower Loan Document or Funding Loan Document, shall be due and payable by Borrower to Bank the date monthly payments are due pursuant to Section 3.1.3 commencing in the month following the month in which the Conversion Date occurs in accordance with the applicable Borrower Loan Document or Funding Loan Document. Borrower shall pay to Fiscal Agent Fiscal Agent's Fees (as defined in the Funding Loan Agreement) in accordance with the terms of the Funding Loan Agreement.

#### **4. CONDITIONS PRECEDENT.**

**4.1 Conditions to Closing of the Borrower Loan.** Prior to the Closing Date, Bank shall have received all of the following documents, instruments and other items (each of which, in the case of documents or instruments, shall be fully and properly executed and, where required by Bank, acknowledged by all parties thereto), each in form and content acceptable to Bank:

**4.1.1** The original Borrower Loan Documents.

**4.1.2** Copies of organizational documents of Borrower and all Loan Parties, duly filed and/or recorded in the appropriate jurisdiction and certified as required by Bank, including without limitation, and as applicable, (a) articles of organization and operating agreements, (b) certificates of limited partnership, statements of partnership and partnership agreements, (c) statements of joint venture and joint venture agreements, (d) articles of incorporation, (e) trust agreements, and (f) any amendments to any of the foregoing.

**4.1.3** Evidence that the insurance required by the Agreement to Furnish Insurance is in full force and effect.

**4.1.4** All Borrower's Funds required under this Agreement.

**4.1.5** Copies of the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, and any other agreements that Bank determines are material to construction of the Improvements, all certified as required by Bank.

**4.1.6** Copies of the building permits or permit-ready letter which provide the only condition to issuance of the building permits is the payments of the fees with respect to such building permits and any other authorizations required from any Governmental Authority in connection with construction of the Improvements.

**4.1.7** If required by Bank, a current ALTA survey of the Real Property, including dimensions and delineation and location of all easements thereon, certified to and satisfactory to Bank and Title Insurer.

**4.1.8** If required by Bank, letters from local utility companies and any Governmental Authority stating that electric, gas, sewer, water, cable and telephone facilities are or will be available to the Real Property upon completion of the Improvements.

**4.1.9** Written results of such due diligence investigations with respect to Borrower, any Loan Party and the Property as Bank deems necessary, including without limitation, environmental reviews, engineering inspections, seismic studies and financial analysis.

**4.1.10** An opinion of Borrower's counsel as to (a) the proper formation, valid existence and good standing of Borrower and all Loan Parties, (b) the due authorization and execution of all Borrower Loan Documents and any Hedge Documents with Bank by Borrower and all Loan Parties, (c) whether all necessary consents have been obtained with respect to the Borrower Loan and any Hedge Documents with Bank, (d) the absence of any threatened or pending actions, suits or proceedings against or affecting the Property, Borrower or any Loan Party, (e) the violation of any agreements to which Borrower or any Loan Party is bound, and (f) such other matters as Bank may determine to be necessary or appropriate.

**4.1.11** A performance bond naming Governmental Lender and Bank as co-obligee and a labor and material payment bond, in an amount equal to the amount of the Construction Contract, or if there is no Construction Contract, then in such amounts as Bank may require, issued by a surety acceptable to Bank and otherwise in form and content acceptable to Bank. The performance and the labor and material bonds shall have been recorded in the official records of the county in which the Real Property is located prior to the commencement of work on the Improvements.

**4.1.12** Copies of the HCD Loan Agreement and the HCD Estoppel Letter, each in form and content acceptable to Bank.

**4.1.13** Such evidence as Bank may reasonably require to confirm the accuracy of the representations and warranties set forth in Sections 6.1 through 6.33 of this Agreement.

**4.1.14** Copies of the Subordinate Documents (excluding the HCD Documents except as provided in Section 4.1.12 above), each in a form acceptable to Bank.

**4.1.15** Borrower shall have entered into the AHAP Contract on terms and conditions acceptable to Bank.

**4.1.16** Housing Authority shall have consented to the collateral assignment of the AHAP Contract to Bank pursuant to the Assignment of AHAP.

**4.1.17** Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.51, with respect to the Borrower Note in an amount not less than the Projected Permanent Phase Loan Amount, which provides for a fixed rate of interest on the Borrower Note not to exceed (or otherwise protects against the interest rate on the Borrower Note exceeding) \_\_\_\_ percent (\_\_\_\_)% [**CHECK**] (including the Margin) for the period commencing no later than the Initial Outside Conversion Date through the Maturity Date.

**4.1.18** Borrower shall have delivered to Bank the Ground Lease and the Ground Lease Estoppel Certificate, in form and substance acceptable to Bank, duly executed by the Fee Owner.

**4.1.19** Such other documentation, certifications, opinions and information as may be reasonably required by Governmental Lender or Bank.

**4.1.20** Borrower shall have provided to Bank a soil management plan for the proposed development of the Real Property acceptable to Bank in its sole discretion.

**4.1.21** Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

**4.2 Conditions to Issuance of the Funding Loan Note.** Governmental Lender's obligation to execute the Funding Loan Note, and Governmental Lender's and Bank's obligation to enter into this Agreement, the other Borrower Loan Documents and the Funding Loan Documents, and to make the Initial Disbursement, are subject to the satisfaction, or waiver by Governmental Lender or Bank, as applicable, each of the conditions in Section 4.1 and of all of the following conditions precedent:

**4.2.1** Governmental Lender and Bank shall have received fully executed originals of each of the Borrower Loan Documents and the Funding Loan Documents.

**4.2.2** The Tax-Exempt Regulatory Agreement shall have been duly executed, acknowledged and delivered by Borrower to Governmental Lender and Bank.

**4.2.3** Each of the Recorded Documents shall have been recorded in the Official Records of the County.

**4.2.4** The Financing Statements have been filed with the Secretary of State of California, and Bank shall have received a certificate of the Secretary of State showing such Financing Statements to be subject to no prior filings (other than filings perfecting Permitted Liens) except as otherwise agreed to by Bank.

**4.2.5** The Initial Disbursement shall have occurred.

**4.2.6** Bank and Governmental Lender shall have received and approved an executed original of each of the following opinions, in each case addressed to each of Governmental Lender and Bank and in each case in form and substance approved by Governmental Lender and Bank: (a) the opinion of counsel to Borrower and the other Loan Parties, opining as to the due formation, qualification and good standing of Borrower and the other Loan Parties, the due authorization by Borrower and the Loan Parties

of the execution, delivery and performance of the Borrower Loan Documents, and the enforceability of the Borrower Loan Documents, and covering such other matters as Bank may require; and (b) an opinion of Tax Counsel (or a reliance letter in respect of such opinion), opining as to the due organization and valid existence of the Governmental Lender, due execution and delivery by the Governmental Lender of the Funding Loan Agreement, and this Agreement, the enforceability of the Funding Loan Agreement and this Agreement, and the exclusion of interest on the Funding Loan Note from gross income for federal income tax purposes.

**4.2.7** Bank shall have received and approved such Financial Statements and other financial information as it may require regarding the financial condition of Borrower, the Loan Parties and/or the Property.

**4.2.8** Bank shall have received and approved a detailed sources and uses statement showing (i) all costs and expenses of issuance of the Funding Loan Note, and (ii) all sources for payment of such costs and expenses.

**4.2.9** To the extent not funded from the Initial Disbursement, Borrower shall have paid to Governmental Lender and Bank, as applicable, in immediately available good funds (a) all costs and expenses incurred by Governmental Lender and Bank in connection with the Funding Loan, the making of the Borrower Loan and the negotiation, preparation and closing of the Borrower Loan Documents and Funding Loan Documents, (b) the Tax Counsel fees and expenses due and payable; (c) all of fees to Governmental Lender then due and payable; and (d) the initial Fiscal Agent's Fees (as defined in the Funding Loan Agreement).

**4.2.10** Borrower shall have delivered to Bank, and Bank shall have approved such information, and/or documentation as Bank may require to evidence that paragraph (1) of Section 42(h) of the Code does not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

**4.2.11** Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

## **5. DISBURSEMENTS.**

### **5.1 Initial Disbursement.**

**5.1.1** Prior to the Initial Disbursement, the following conditions shall have been satisfied in addition to the conditions set forth in Sections 4.1 and 4.2, as determined by Bank:

(a) Each of the Recorded Documents shall have been recorded in the Official Records of the county in which the Real Property is located.

(b) The Financing Statement shall have been filed with the Secretary of State of California, and Bank shall have received a certificate of the Secretary of State showing such Financing Statements to be subject to no prior filings (other than filings perfecting Permitted Liens) except as otherwise agreed to by Bank.

(c) Borrower and all Loan Parties shall have performed to Bank's satisfaction all covenants required to be performed under this Agreement, the other Borrower Loan Documents and the Funding Loan Documents on or before the Funding Date.

(d) No change shall have occurred that could have a material adverse effect on Borrower, any Loan Party, the Property or Bank's right or ability to receive payment in full of the Borrower Loan, as determined by Bank in its sole discretion.



(e) No Event of Default shall exist.

(f) The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

(g) Bank shall have approved in its sole discretion, the Detailed Cost Breakdown, the Project Budget, the Plans, the Construction Contract (if any), the Architect's Agreement, and any other agreements that Bank determines are material to the construction of the Improvements.

(h) Bank shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Bank.

(i) If required by Bank, Bank shall have received a list of the names and addresses of all suppliers, laborers and subcontractors with whom agreements have been made with Contractor and/or Borrower to deliver materials and/or perform work on the Improvements.

(j) Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least \$[2,474,415.00].

(k) Title Insurer shall have committed to deliver to Bank the Title Policy.

(l) Borrower shall have paid all costs, charges and expenses incurred or to be incurred (as estimated by Bank) in connection with the Borrower Loan or payable pursuant to this Agreement or the other Loan Documents, excluding direct costs of labor and materials related to the Improvements.

(m) Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

**5.1.2** Upon satisfaction of the conditions contained in Sections 4.1, 4.2 and 5.1.1, Bank, on behalf of Governmental Lender, shall make Advances in accordance with the Project Budget and the Disbursement Schedule the amounts necessary to pay all costs, charges and expenses incurred or to be incurred (as estimated by Bank) in connection with the Borrower Loan or payable pursuant to this Agreement or the other Borrower Loan Documents, excluding direct costs of labor and materials related to the Improvements, but including without limitation, the Loan Fee, service charges, fees and expenses of the Fiscal Agent, title charges, tax and lien service charges, recording fees, escrow fees, appraisal fees, legal fees, real property taxes and assessments, insurance premiums any amounts required to pay existing encumbrances affecting the Property, and any amounts required to complete purchase of the Real Property, to be disbursed pursuant to the settlement statement approved by Bank.

## **5.2 Subsequent Disbursements.**

**5.2.1** Prior to making any Advances after the Initial Disbursement, except for the final Advance, the following additional conditions shall have been satisfied, as determined by Bank:

(a) All specific requirements for the disbursement set forth in the Disbursement Schedule shall have been satisfied.

(b) No Event of Default shall exist.

(c) The representations and warranties of Borrower in this Agreement and the other Borrower Loan Documents shall be true and correct on and as of the date of the disbursement with the same effect as if made on such date.

(d) The Improvements shall not have been damaged by fire or other casualty unless Bank has determined that Bank will receive proceeds sufficient in Bank's judgment to effect the satisfactory restoration of the Improvements and permit Project Completion prior to the Completion Date.

(e) If required by Bank, Bank shall have received confirmation to its satisfaction that (A) to date, the Improvements have been constructed in accordance with the Plans and the Construction Contract (if any), and (B) the present state of construction of the Improvements will, barring the unforeseen and unknown delays, permit Project Completion on or before the Completion Date.

(f) If Bank has determined that the undisbursed proceeds of the Borrower Loan, together with the undisbursed amount of the Subordinate Loans designated for payment for construction of the Improvements and Borrower's Funds (if any), are insufficient to pay all costs to complete construction of the Improvements (and all other costs included within the Project Budget), Borrower shall have deposited into the Borrowers' Funds Account cash in the amount of such shortfall as provided in Section 7.2.

(g) Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs prior to 75% construction completion in accordance with this Agreement is at least \$[6,443,479.00].

(h) If required by Bank, (A) Title Insurer shall have issued its continuation endorsement to the Title Policy indicating that since the last preceding disbursement, there: (1) has been no change in the condition of title to the Real Property; and (2) are no intervening liens that may now or hereafter take priority over the disbursement to be made, and (B) upon completion of the foundation, Title Insurer shall have issued its foundation endorsement to the Title Policy insuring Bank that the foundation is constructed wholly within the boundaries of the Real Property and does not encroach on any easements or violate any covenants, conditions or restrictions or any Governmental Requirement.

(i) Bank shall have received satisfactory evidence that there are no liens on Personal Property, except as otherwise agreed to by Bank.

(j) All amounts deposited into the Borrower's Funds Account shall have been withdrawn by Borrower to cover Project costs in accordance with the terms and conditions of this Agreement, and the entire amount of the Subordinate Loans (other than the HCD Loan) shall have been fully disbursed to or for the account of Borrower and applied towards Project costs.

(k) If requested by Bank, (a) Tax Credit Investor shall have executed and delivered to Bank an estoppel certificate in form and substance of the Tax Credit Investor Estoppel Certificate, which shall contain such certifications as Bank shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, and (b) each Subordinate Lender shall have executed and delivered to Bank an estoppel certificate in a form and substance which shall contain such certifications as Bank shall reasonably require with respect to the applicable Subordinate Documents.

(l) Any special conditions set forth in the Special Conditions attached hereto as Exhibit C shall have been satisfied.

**5.2.2** Upon satisfaction of the conditions contained in Sections 5.2.1 and 5.4 (as applicable), on or about the first day of each calendar month following commencement of construction of the Improvements, Contractor shall submit to Borrower a Draw Request showing the estimated cost of labor performed on and materials incorporated into the Improvements, a pro-rata portion of Contractor's profit and that pro-rata portion of overhead of Contractor attributable to the construction of the Improvements.

The original of such Draw Request, certified true and correct by Contractor and approved by Borrower, shall be submitted to Bank for payment. Upon verification of the accuracy of the Draw Request by inspection of the Real Property and Improvements (if required by Bank), Governmental Lender shall disburse the amount of the respective approved Draw Request in accordance with the Disbursement Schedule (i) directly to Borrower or, upon the occurrence and during the continuance of an Event of Default, directly to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the construction of the Improvements (at Bank's option as to whom and in what amounts payments are to be made), or (ii) if specifically required by Bank, through a fund control service acceptable to Bank under a fund control agreement in form and content acceptable to Bank.

### **5.3 Final Disbursement.**

**5.3.1** Prior to making the final Advance, the conditions set forth in Sections 5.1, 5.2 and 5.4 (as applicable) and the following conditions shall have been satisfied, as determined by Bank:

(a) Bank shall have received confirmation to its satisfaction that the Improvements have been completed in accordance with the Plans and the Construction Contract (if any).

(b) If required by Bank, Bank shall have received a copy of the final certificate of occupancy (or its equivalent as determined by Bank) issued by the appropriate Governmental Authority.

(c) Bank shall have received evidence that Borrower has recorded a notice of completion (or its equivalent as determined by Bank) with respect to the Improvements.

(d) All Subordinate Loans (other than the HCD Loan) shall have been fully disbursed to or for the account of Borrower and applied towards Project costs.

(e) Bank shall have received (A) such endorsements to the Title Policy as Bank may require which shall insure that the Improvements have been completed free of all mechanic's and materialmen's liens or claims thereof, or (B) such additional title policies with endorsements as Bank may require, with a liability limit of not less than the principal amount of the Borrower Loan, issued by Title Insurer, with coverage and in form satisfactory to Bank, insuring Governmental Lender's and Bank's interest under the Deed of Trust as a first lien on the Real Property, excepting only such items as shall have been approved in writing by Bank.

(f) If requested by Bank, (a) Tax Credit Investor shall have executed and delivered to Bank an estoppel certificate in form and substance of the Tax Credit Investor Estoppel Certificate, which shall contain such certifications as Bank shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement, and (b) each Subordinate Lender shall have executed and delivered to Bank an estoppel certificate in a form and substance which shall contain such certifications as Bank shall reasonably require with respect to the applicable Subordinate Documents.

**5.3.2** The final disbursement shall consist of the payment of any monies retained from progress payments or disbursements as set forth in this Agreement. Subject to the provisions of this Agreement, the final disbursement shall be made only after Borrower has satisfied the conditions of Sections 5.3 and 5.4 (as applicable).

**5.4 Additional Conditions to Advances.** Bank shall have the right to condition any Advance upon Bank's receipt and approval of the following, each in form and content acceptable to Bank:

**5.4.1** The Draw Request.

**5.4.2** Bills, invoices, documents of title, vouchers, statements, receipts and any other documents evidencing the total amount expended, incurred or due for any requested line item shown in the Project Budget.

**5.4.3** Evidence of Borrower's use of a lien release, joint check or voucher system acceptable to Bank for payments or disbursements to Contractor or to such Persons as have actually supplied labor, materials or services in connection with the construction of the Improvements.

**5.4.4** Architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed and its conformance to the Plans and any Governmental Requirement based upon such architect's, inspector's and/or engineer's periodic physical inspections of the Real Property and Improvements.

**5.4.5** Waivers and releases of any mechanic's lien, stop notice claim, equitable lien claim or other lien claim rights.

**5.4.6** Any other documents, requirements, evidence or information that Bank may request under any provision of the Borrower Loan Documents.

**5.4.7** Evidence that any goods, materials, supplies, fixtures or other work in progress for which disbursement is requested have been incorporated into the Improvements.

**5.4.8** In the event any Draw Request includes the cost of Offsite Materials, such Draw Request shall include each of the following: (a) evidence that the Offsite Materials have been purchased by Borrower, have been segregated from other materials in the facility where they are stored and have been appropriately marked to indicate Borrower's ownership thereof and Bank's security interest therein; (b) evidence that the Offsite Materials are insured as required by this Agreement; and (c) at Bank's request, a security agreement, financing statement, acknowledgment, and/or subordination agreement in form and content satisfactory to Bank executed by the supplier of the Offsite Materials, and/or such other Persons as Bank determines may have an interest in or claim to the Offsite Materials, together with such other additional documentation and evidence as Bank may reasonably require to assure itself that it has a perfected first priority lien on the Offsite Materials.

**5.4.9** In the event any Draw Request includes the cost of Onsite Materials, such Draw Request shall include each of the following: (a) evidence that the Onsite Materials have been purchased by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Real Property for which adequate security is provided against theft and vandalism.

## **5.5 Disbursement Limits.**

**5.5.1** Borrower hereby represents to Bank that, as of the date of this Agreement, the Project Budget represents the total amount needed by Borrower to construct the Improvements and to perform Borrower's obligations under the Borrower Loan Documents and Funding Loan Documents. Bank shall not be required to make any Advance for any Construction Costs or any other purpose that is not set forth in the Project Budget nor shall Bank be required to make any Advance for any line item in the Project Budget in an amount that when added to the sum of all prior Advances for that line item would exceed the sum allocated in the Project Budget for that line item.

**5.5.2** Bank reserves and shall have the right to make Advances that are allocated to any line items in the Project Budget for such other purposes or in such different proportions as Bank may, in its sole discretion, deem necessary or advisable. Borrower shall have no right whatsoever to reallocate Advances from one line item in the Project Budget to another or otherwise amend the Project Budget without the prior consent of Bank.

**5.5.3** All Advances shall be made in accordance with the applicable provisions of the Project Budget and the Disbursement Schedule. All funds disbursed to Borrower shall be received by Borrower in trust and Borrower agrees that such funds shall be used only for the payment of those items contemplated by the particular Advance.

**5.5.4** Bank shall not be required to disburse an aggregate amount of the proceeds of the Borrower Loan for labor furnished to and materials incorporated into the Improvements during any stage of construction that exceeds the lesser of (a) the value of such labor and materials, and (b) the amount allocated to that stage of construction in the Project Budget. In any event, Bank shall not be required to disburse any amount that, in Bank's opinion, will reduce that portion of the undisbursed proceeds of the Borrower Loan designated for completion of the Improvements below the amount needed to pay for the labor and materials necessary to complete the Improvements.

**5.5.5** Notwithstanding anything to the contrary contained herein, and except as provided in Sections 9.6(a) and 9.6(i) of the Funding Loan Agreement, disbursements of the Borrower Loan shall be made from the Project Fund held by the Fiscal Agent pursuant to the Funding Loan Agreement.

**5.6 Disbursement into Borrower's Funds Account.** Notwithstanding anything to the contrary contained in the Funding Loan Documents or the Borrower Loan Documents, if the Funding Loan has not been fully disbursed by December 1, 2022 and Conversion has not yet occurred, in the event the Bank determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on the Funding Loan not being excluded from gross income for federal income tax purposes due to any undisbursed portion of the Funding Loan (the "Remaining Undisbursed Funding Loan"), or otherwise determines that it is in the Bank's best interest to fully fund the Funding Loan in order to assure that interest on the Funding Loan will remain excluded from gross income for federal income tax purposes (each, a "Contingency Event"), then Bank may, in its discretion, upon five (5) days' written notice to Borrower, disburse all or any portion of the Remaining Undisbursed Funding Loan to the Fiscal Agent for deposit into the Project Fund established pursuant to the Funding Loan Agreement, at which time the proceeds so advanced shall constitute (i) an advance of the Funding Loan to the Governmental Lender, and (ii) an advance of the Borrower Loan by Governmental Lender to the Borrower, unless Bank receives an opinion of Tax Counsel to the effect that the draw of Funding Loan proceeds after the Contingency Event will not adversely affect the exclusion of interest on the Funding Loan Note from gross income for federal income tax purposes. The portion of the Borrower Loan disbursed into the Project Fund pursuant to this Section shall be deemed outstanding as of the date advanced into the Project Fund and will immediately commence to accrue interest as provided in Section 3.1.2. All funds disbursed into the Project Fund shall continue to be disbursed by Bank to pay Project costs pursuant to the provisions of the Funding Loan Agreement, this Section 5 and the Disbursement Schedule as if they were Advances of the Borrower Loan.

**6. REPRESENTATIONS AND WARRANTIES OF BORROWER.** Borrower makes the following representations and warranties for the benefit of Governmental Lender and Bank, each of which is material and is relied upon by Governmental Lender in making the Borrower Loan and Governmental Lender and Bank in executing this Agreement. Each of the following representations and warranties shall be true and accurate as of the Contract Date, the Closing Date and upon disbursement of the Initial Disbursement and each Advance. Borrower agrees that such representations and warranties shall survive and continue until full and final payment of all sums owed under the Borrower Loan Documents.

**6.1 Formation/Authority.** Borrower has complied with all laws and regulations concerning Borrower's organization, existence and the transaction of Borrower's business, and is in good standing in each state in which Borrower conducts business. Borrower is authorized to execute, deliver and perform Borrower's obligations under each of the Borrower Loan Documents and the Funding Loan Documents, and Borrower is authorized to construct the Improvements and to own and operate the Property.

**6.2 No Defaults Under Existing Agreements.** The transactions contemplated hereby and the performance by Borrower of Borrower's obligations under the Borrower Loan Documents and the

Funding Loan Documents will not result in any breach of or default under any deed of trust, mortgage, lease, loan, security agreement or any other agreement to which Borrower is a party or may be bound or affected.

**6.3 No Actions.** There are no actions, suits or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower or the Property or involving the validity, priority or enforceability of the Deed of Trust or any other Borrower Loan Document or Funding Loan Documents or affecting Bank's right to receive payment in full of all amounts outstanding under this Agreement, the other Borrower Loan Documents or the Funding Loan Documents. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority. There (a) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Property, the Borrower, or any Loan Party, and (b) has been no assertion or exercise of jurisdiction over the Property, the Borrower or any Loan Party by any court empowered to exercise bankruptcy powers. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any Governmental Authority that would have the effect of preventing or hindering performance of its duties under this Agreement, any other Borrower Loan Documents or any Funding Loan Documents, nor are there any proceedings presently in progress or to its knowledge contemplated that would, if successful, lead to the issuance of any such order.

**6.4 Other Liens.** Borrower has made no contract or arrangement of any kind, the performance of which by the other party thereto would give rise to a lien on the Property, except for its arrangements with the Architect, the Contractor or the subcontractors if there is no Contractor.

**6.5 Leases.** All Leases are in full force and effect, there are no defaults under any of the provisions thereof by any party thereto, and all conditions to the effectiveness or continuing effectiveness of the Leases required to be satisfied as of the date hereof have been satisfied.

**6.6 Financial Statements.** The Financial Statements delivered to Bank by Borrower and any Loan Party are true and correct in all material respects, have been prepared in accordance with accounting practices and principles acceptable to Bank and consistently applied, and fairly present the financial condition(s) of the Person(s) referred to therein as of the respective dates; no materially adverse change has occurred in the financial condition reflected in any such financial statement since the date shown thereon, and no additional material liabilities have been incurred by any such Person since the date thereof other than the borrowing contemplated hereby or other borrowing disclosed in writing to and approved by Bank.

**6.7 Compliance With Laws.** The Property and the actual use thereof by Borrower complies in all material respects with all Governmental Requirements. Borrower has received no notices of violations of any Governmental Requirement.

**6.8 Permits, Approvals, Licenses.** Borrower has obtained all licenses, permits and approvals necessary for the ownership, construction operation and management of the Property, including all approvals essential to the transactions contemplated by this Agreement, the Funding Loan Documents, the Borrower Loan Documents and any other documents contemplated hereby or thereby

**6.9 Ownership of Real Property.** Borrower has, or as of the Closing Date will have, and will continue to have a leasehold interest in the Leasehold Estate, subject only to the Permitted Liens. The Borrower is the sole borrower under the Borrower Loan. Borrower shall make no changes to the Property, when it is built, or to the operation thereof that would affect the qualification of the Property under the Act. The Borrower intends to utilize the Property as multifamily rental housing during the Qualified Project Period (as defined in the Tax-Exempt Regulatory Agreement).

**6.10 Ownership of Personal Property.** Borrower owns directly all of the Personal Property free and clear of all liens, encumbrances and adverse claims and the security interest of Bank in the Personal Property shall be a first lien thereon.

**6.11 Other Financing.** Except for the Subordinate Loans or as otherwise disclosed in writing to Bank and approved by Bank in writing prior to the Closing Date, Borrower has not received other financing for either the acquisition of the Property or the construction and installation of the Improvements.

**6.12 Plans, Defects.** The Plans are satisfactory to Borrower, and to the extent required by any Governmental Requirement or any effective restrictive covenant, have been approved by all applicable Governmental Authorities and the beneficiaries of any such covenant respectively; the Plans so approved have been approved by Borrower and Contractor as set forth in the Certification of Plans and Specifications delivered to Bank by Borrower.

**6.13 Utilities.** All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are either available at the boundaries of the Real Property or all necessary steps have been taken by Borrower and applicable Governmental Authorities to assure the complete construction and installation thereof, including water supply, storm drain and sanitary sewer facilities, and gas, electric, cable and telephone facilities.

**6.14 Roads.** All roads necessary for the full use of the Improvements for their intended purposes have been completed or the necessary rights-of-way therefore have either been acquired by the applicable Governmental Authority or dedicated to public use and accepted by such Governmental Authority. All necessary steps have been taken by Borrower and such Governmental Authority to assure the complete construction thereof.

**6.15 CC&Rs, Zoning.** Borrower has examined, is familiar with, and the Improvements will in all respects conform to and comply with, all covenants, conditions, restrictions, reservations and zoning ordinances affecting the Property.

**6.16 Finder's Fees.** Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other sum in connection with the execution of this Agreement, consummation of the transactions contemplated hereby, or the making of the Borrower Loan to Borrower.

**6.17 Draw Request.** Each Draw Request shall be true, complete and accurate and the submission of same shall constitute a reaffirmation of the representations, warranties and covenants contained herein.

**6.18 Other Information.** No information, statement or report furnished in writing to Governmental Lender or Bank by Borrower, any Loan Party or any of their respective representatives in connection with this Agreement, the Funding Loan Documents or the other Borrower Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by Borrower in connection with the preparation of any materials related to the issuance, delivery or offering of the Funding Loan Note) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and the representations and warranties of Borrower and the statements, information and descriptions contained in Borrower's closing certificates, as of the Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions contained herein and in any certificate of Borrower delivered as of the Closing Date are reasonable and based on the best information available to Borrower.

**6.19 No Default.** No event has occurred and no condition exists with respect to Borrower, any Loan Party or the Property that would constitute an Event of Default or with the giving of notice or passage of time, or both, if not cured would become an Event of Default.

**6.20 Tax Certificate.** Borrower has complied with all terms and conditions of the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate pertaining to Borrower and the Property are true and accurate.

**6.21 Regulatory Agreement.** Borrower is not in default under the Regulatory Agreements. The Property is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. Borrower intends to cause the residential units at the Property to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. All Leases will comply with all Governmental Requirements and the Regulatory Agreements. The Property meets the requirements of this Agreement, the Regulatory Agreements, the Act and the Code with respect to multifamily rental housing.

**6.22 No Governmental Lender Relationships.** To the best knowledge of Borrower, no member, officer, agent or employee of Governmental Lender has been or is in any manner interested, directly or indirectly, in that Person's own, name or in the name of any other Person, in the Funding Loan Note, the Funding Loan Documents, the Borrower Loan Documents, Borrower, any Loan Party or the Property, in any contract for property or materials to be furnished or used in connection with the Property, or in any aspect of the transactions contemplated by the Funding Loan Documents or the Borrower Loan Documents.

**6.23 Authorizations and Consents.** No authorization, consent, approval, order, registration declaration or withholding of objection on the part of or filing of or with any Governmental Authority not already obtained or made (or to the extent not yet obtained or made Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Agreement, the Funding Loan Documents, the Borrower Loan Documents or any other documents contemplated by this Agreement, the Funding Loan Documents or the Borrower Loan Documents, or the performance of the terms and provisions hereof or thereof by the Borrower.

**6.24 No Reliance.** Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Property; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or Governmental Lender is a party or of which it is a beneficiary including, without limitation, the Funding Loan Agreement; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Property; and that it has not relied on the Governmental Lender or Bank for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement, the Funding Loan Agreement or otherwise relied on Governmental Lender, Bank or Bank in any manner.

**6.25 Environmental Matters.** Borrower has not received any notice that it or the Property is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (collectively "Environmental Laws"), or with any rules, regulations and administrative orders of any Governmental Authority, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain "hazardous materials" (as defined in the Environmental Laws), nor has Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

**6.26 ERISA.** Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor



regulations thereunder, with the Code and with terms of such plan or plans with respect to each pension or welfare benefit plan to which Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

**6.27 Funding Loan Note.** The weighted average maturity of the Funding Loan Note does not exceed 120% of the average reasonably expected economic life of the Property financed with the proceeds of the Borrower Loan. The Funding Loan Note is not and shall not be “federally guaranteed” as defined in Section 149(b) of the Code. Borrower intends to hold the Property for its own account and has no current plans to sell and has not entered into any agreement to sell all or any portion of the Property.

**6.28 HCD Loan Agreement.** The HCD Loan Agreement is unmodified, is in full force and effect, and all conditions to the effectiveness or continuing effectiveness of the HCD Loan Agreement required to be satisfied by the date hereof have been satisfied.

**6.29 Tax Credit Allocation Documents Effective.** The Tax Credit Allocation Documents are in full force and effect and have not been revoked, amended or modified in any way. Borrower knows of no reason why Project Completion could not occur on or before the Completion Date.

**6.30 Satisfaction of Conditions under Tax Credit Allocation Documents and Subordinate Documents, AHAP Contract and HAP Contract.** Each and every covenant, condition and obligation contained in the Tax Credit Allocation Documents and the Subordinate Documents, the AHAP Contract and the HAP Contract (after the HAP Contract has been fully executed) required to be performed or satisfied as of the date hereof, and each and every matter required to be approved thereunder as of the date hereof, has been satisfied or approved, as applicable.

**6.31 Tax Credits Not Subject to State Ceiling.** Fifty Percent (50%) or more of the aggregate basis of the Improvements and Borrower’s interest in the Property will be financed with proceeds from the Funding Loan Note and, therefore, paragraph (1) of Section 42(h) of the Code will not apply to the Tax Credits by virtue of the provisions set forth in subparagraph (4)(B) of Section 42(h) of the Code.

**6.32 Ground Lease.** The Ground Lease is unmodified, is in full force and effect, and all conditions to the effectiveness or continuing effectiveness of the Ground Lease required to be satisfied by the date thereof have been satisfied.

**6.33 Additional Representations and Warranties.** Borrower also makes the representations and warranties set forth in Section 5.5.4 of the Special Conditions attached hereto as Exhibit C.

**7. BORROWER’S COVENANTS.** Borrower covenants and agrees with Governmental Lender and Bank that until the full and final payment of all sums owed under the Borrower Loan Documents and the Funding Loan Documents, unless Bank waives compliance in writing:

**7.1 Application of Advances.** Borrower shall receive the Advances made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such Advance.

**7.2 Borrower’s Funds.** At the time and in amounts required by Bank, Borrower shall deposit Borrower’s Funds into the Borrower’s Funds Account. Should it appear at any time in Bank’s judgment that the sum of undisbursed proceeds of the Borrower Loan and the then balance of the Borrower’s Funds Account are insufficient to provide the financing for completion of the Improvements, Borrower shall pay to Bank, within ten days following receipt of written demand by Bank, an amount equal to such deficiency for deposit into the Borrower’s Funds Account.

**7.3 Lien Priority.** At Borrower’s sole cost and expense, Borrower shall maintain the Deed of Trust as a first lien on the Property.

## **7.4 Construction Start and Completion.**

**7.4.1** Borrower shall not commence construction of the Improvements, including, but not limited to, grading and site clearance, and shall not undertake any other act on the Real Property prior to recordation of the Deed of Trust, the result of which would cause any mechanics' or materialmen's lien thereafter filed to take priority over the lien of the Deed of Trust, unless prior arrangements satisfactory to both Bank and Title Insurer have been made.

**7.4.2** Borrower shall cause construction of the Improvements to be commenced not more than thirty (30) days after the recordation of the Deed of Trust.

**7.4.3** Borrower shall cause (a) the Improvements to be constructed in a good and workmanlike manner, with materials of high quality, and in accordance with the Plans, Governmental Requirements and sound building and engineering practices, (b) the construction of the Improvements to be prosecuted with diligence and continuity and completed in accordance with the Plans and to otherwise cause Project Completion to occur on or before the Completion Date, free and clear of liens or claims for liens, and (c) all licenses and permits necessary for the occupancy, use or sale of the Improvements to be issued. Borrower shall promptly commence and diligently proceed with the Project.

**7.4.4** Borrower shall complete the construction of the Improvements on or before the Completion Date. The construction of the Improvements shall be considered complete for purposes of this Agreement only when (a) the construction of the Improvements has been completed substantially in accordance with the Plans and has been fully paid for subject to Borrower's obligations to pay and discharge or cause the release of any mechanics' lien, (b) all work requiring inspection or certification by any Governmental Authority has been completed and all requisite certificates, approvals and other necessary authorizations (including any required certificates of occupancy) have been obtained, and (c) streets and offsite utilities located within or pertaining to the Property have been completed to the satisfaction of all applicable authorities.

## **7.5 Change Orders.**

**7.5.1** Borrower shall not permit any change in the Plans without Bank's prior consent if any such change (a) constitutes a material change in material or equipment specifications, architectural or structural design, or the value or quality of the Improvements, or (b) would result in an increase or decrease in the cost of construction of the Improvements in excess of the Single Change Order Limit for any single change, or in excess of the Aggregate Change Order Limit for all changes.

**7.5.2** Borrower shall submit any proposed change in the Plans to Bank not later than ten Business Days prior to the commencement of construction relating to such change.

**7.5.3** Borrower shall deliver to Bank in connection with any proposed change requiring Bank's prior written consent (a) a written request therefor, together with working drawings and a written description of the proposed change, submitted on a change order form acceptable to Bank and executed by Borrower, Architect and Contractor, and (b) evidence satisfactory to Bank as to the cost and time necessary to complete the proposed change.

**7.5.4** Prior to permitting any change in the Plans requiring Bank's consent, Borrower shall satisfy any condition of Bank's consent, including, but not limited to, depositing funds to cover any increased Construction Costs into the Borrower's Funds Account as required by Bank, which Bank is authorized to disburse in accordance with the Project Budget and the Disbursement Schedule for payment of such Change Orders upon completion of such changes to Bank's satisfaction.

**7.6 Detailed Cost Breakdown.** Borrower shall not modify the Project Budget or the Detailed Cost Breakdown without Bank's prior written consent, which consent may be conditioned upon, among other things, (a) Bank's receipt of evidence satisfactory to Bank that the change in the Project Budget or

the Detailed Cost Breakdown is reasonably necessary, and (b) Bank's confirmation that, in the opinion of Bank, sufficient funds remain in the undisbursed proceeds of the Borrower Loan (and in the Borrower's Funds Account, if any) to pay for all remaining direct or indirect costs to complete construction of the Improvements.

**7.7 Contractor Covenants.** Borrower shall (a) require from the Contractor (i) covenants similar to the covenants made by Borrower in Sections 7.3, 7.4 and 7.5, and (ii) a covenant that Contractor will, upon request, deliver to Bank the names of all Persons with whom Contractor has contracted or intends to contract for construction of the Improvements or for furnishing of labor or materials therefore; and (b) cause the Contractor (or if no Contractor, the subcontractors) to cooperate with Bank.

**7.8 Construction Contract Only.** Borrower shall not execute any contract or become party to any arrangement for the performance of work on the Real Property with any Person except Contractor, and if there is no Contractor, Borrower shall contract only with major subcontractors approved by Bank for the performance of work on the Real Property.

**7.9 Paid Vouchers.** Borrower shall deliver to Bank, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements.

**7.10 Application of Disbursements.** Borrower shall receive the disbursements to be made hereunder in trust, strictly for the purpose of paying the costs identified in the request for such disbursement.

**7.11 Foundation Completion.** Borrower shall notify Bank immediately upon completion of the foundation of the Improvements and, if required by Bank, deliver to Bank, promptly after completion of the foundation, a foundation survey in form satisfactory to Bank and Title Insurer.

**7.12 Personal Property Installation.** Without Bank's written consent, Borrower shall not install materials, personal property, equipment, or fixtures subject to any security agreement or other agreement or contract giving any Person other than Borrower any right or title to such property.

**7.13 Defect Corrections.** Upon demand of Bank, Borrower shall correct any defect in the Improvements or any departure from the Plans not approved by Bank.

**7.14 Stop Notices; Mechanic's Liens.** If (a) a bonded stop notice is received by Bank that Bank believes requires the withholding of funds from any Advance or from any disbursement of proceeds from the Borrower's Funds Account, or (b) a mechanics' lien, material supplier's lien or other construction lien is recorded against the Real Property, then Borrower shall within 20 days of such receipt or recordation or within five days of Bank's demand (whichever first occurs):

**7.14.1** pay and discharge same;

**7.14.2** effect the release of same by recording a surety bond in sufficient form and amount issued by a surety acceptable to Bank; or

**7.14.3** provide Bank with such other assurance as Bank, in its sole discretion, deems to be satisfactory for the payment of, and protection of Bank from, such lien or bonded stop notice.

**7.15 Record Keeping, Financial and Other Information.** Borrower shall keep and maintain full and complete books of account and other records reflecting the results of operations of the Property in accordance with accounting practices and principles acceptable to Bank and consistently applied, and shall furnish or cause to be furnished to Bank such financial information concerning Borrower, each Loan Party and the Property as Bank may require, including but not limited to:

**7.15.1** within sixty (60) days after the close of each quarter, except for the final quarter of each year, Borrower's and Guarantor's Financial Statement as of the close of such period,

**7.15.2** within one hundred eighty (180) days of the close of each fiscal year-end, the annual Financial Statements for Borrower and each Loan Party,

**7.15.3** within thirty (30) days after written request by Bank, a copy of the most recent filed Federal income tax returns for Borrower and each Loan Party, together with all supporting schedules,

**7.15.4** within thirty (30) days after written request by Bank, the Financial Statements of all affiliates and subsidiaries of Borrower and each Loan Party,

**7.15.5** within thirty (30) days after the end of each year, a projected cash flow statement for the next succeeding calendar year for Guarantor, and

**7.15.6** promptly, upon request, any other financial information requested by Governmental Lender and Bank.

**7.16 Post-Construction Financial Reporting.** Upon completion of construction of the Improvements, Borrower shall furnish to Bank, without prior request or demand:

**7.16.1** Within thirty (30) days after the close of each calendar month prior to Conversion and, thereafter within thirty (30) days of written request by Bank, a monthly or quarterly (as applicable) Operating Statement, a current rent roll and, if retail property, a schedule of gross sales; and

**7.16.2** Within thirty (30) days of written request by Bank, an annual Operating Statement for the preceding operating year for the Property; provided that Borrower shall not be obligated to deliver such annual Operating Statement earlier than one hundred twenty (120) days after the close of the preceding operating year.

**7.17 Audit and Inspection Rights.** Borrower shall permit any representative of Governmental Lender or Bank, at any reasonable time, to inspect, audit and examine and copy the books and records of Borrower and each Loan Party. Bank shall have the right to obtain new appraisals or update existing appraisals at any time while the Borrower Loan or any portion thereof remains outstanding. Borrower agrees to cooperate with Bank and the appraiser (and use best efforts to cause the tenants on the Project to cooperate with Bank and the appraiser) in permitting access to the Property and in obtaining operating and other relevant information on the Property. Following an Event of Default hereunder or in the case of a request to transfer the Property pursuant to the Deed of Trust, Borrower shall pay all appraisal fees and related expenses incurred by Bank in obtaining such appraisal reports.

**7.18 Dividends, Distributions.** Following the occurrence and during the continuance of an Event of Default, Borrower shall not (a) make any distribution either in cash, stock or any other property, (b) redeem, retire, repurchase or otherwise acquire any shares or interest in Borrower, or (c) repay any outstanding indebtedness or other advance to any shareholder, partner, member or, if a trust, any trustor or beneficiary of Borrower.

**7.19 Payment of Lawful Claims.** Borrower shall pay or discharge all lawful claims, including taxes, assessments and governmental charges or levies imposed upon Borrower or Borrower's income or profits or upon any property belonging to Borrower prior to the date upon which any penalties attach; provided that Borrower shall not be required to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith and by proper proceedings and for which Borrower is maintaining adequate reserves in accordance with generally accepted accounting principles.

**7.20 Payment of Costs.** Borrower shall pay all costs and expenses incurred by Bank in connection with the enforcement by Bank of any of Borrower's obligations under this Agreement or the

other Borrower Loan Documents, and the preparation of this Agreement and the other Borrower Loan Documents, including but not limited to (a) all appraisal fees, cost engineering and inspection fees, legal fees and expenses (including the fees and costs of in-house counsel and legal staff), accounting fees, environmental consultant fees and costs of title insurance, survey, seismic, escrow and other fees and charges, and (b) all taxes and recording expenses, including stamp taxes, if any.

**7.21 Approval of Easements and Other Documents.** Borrower shall submit to Bank for Bank's approval all prospective easements, private or public dedications, and declarations of covenants, conditions and restrictions intended to affect the Real Property and Bank's approval shall be obtained in writing prior to the execution or granting thereof by Borrower. Borrower's request for approval of any prospective easement or private or public dedication shall be accompanied by a drawing or survey showing the precise location of such prospective easement or private or public dedication. Borrower's request for approval of any prospective declaration of covenants, conditions and restrictions shall be accompanied by a description of the property affected thereby.

**7.22 Compliance with Laws; Preservation of Rights.** Borrower shall comply promptly with all Governmental Requirements, and shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon and therefrom. If payment of the indebtedness secured by the Deed of Trust or any of the other Security Documents is to be insured or guaranteed by any governmental agency, Borrower shall comply with all rules, regulations, requirements and statutes relating thereto or provided in any commitment issued by any such agency to insure or guarantee payment of such indebtedness.

**7.23 Notices.** Borrower shall promptly notify Bank and the Governmental Lender in writing of:

**7.23.1** the occurrence of any Event of Default;

**7.23.2** any litigation affecting Borrower, any Loan Party or the Property, or any other circumstance, event or occurrence that may reasonably be expected to result in a material adverse change in (a) the financial condition of Borrower or any Loan Party, (b) Borrower's ability to timely perform any of Borrower's obligations under any of the Borrower Loan Documents and the Funding Loan Documents, (c) the physical condition or operation of the Property; or (d) the tax exempt status of the interest payable on the Funding Loan Note. and

**7.23.3** any notice that the Improvements or construction thereof, the Property or Borrower's business fails in any respect to comply with any applicable Governmental Requirement.

**7.24 Indemnity.**

**7.24.1** Except to the extent solely due to Bank's gross negligence or willful misconduct and the Governmental Lender's willful misconduct, Borrower shall indemnify, defend and hold each of the Indemnified Parties harmless from and against any and all liabilities, claims, actions, proceedings, damages, costs and expenses (including all attorney's fees, including, but not limited to, the fees and costs of any of such party's in-house counsel and legal staff) arising out of or resulting from:

(a) The Borrower Loan, the Borrower Loan Documents, the Funding Loan Documents, the Ground Lease, the Regulatory Agreements, the Subordinate Documents, the AHAP Contract, the HAP Contract or the execution or amendment or performance thereof or in connection with the transactions contemplated therein, including the issuance, sale and/or resale of the Funding Loan Note.

(b) Any finder's fee, brokerage commission, loan commission or other sum in connection with the consummation of the transactions contemplated hereby.

(c) The development of the Property, construction of the Improvements or the ownership, operation or use of the Property

(d) Any declaration of taxability of interest on the Funding Loan Note, or allegations (or regulatory inquiry) that interest on the Funding Loan Note is taxable, for federal tax purposes.

(e) The issuance any Set Aside Letter, whether such matters are based on theories of derivative liability, comparative negligence or otherwise, at Borrower's own cost and with counsel approved by Bank, unless Bank elects to conduct its own defense at the expense of Borrower.

(f) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof.

(g) Any lien or charge upon payments by the Borrower to the Governmental Lender and/or the Bank hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender in respect of any portion of the Project.

(h) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof.

(i) The defeasance and/or redemption, in whole or in part, of the Funding Loan Note.

(j) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate, offering statement or disclosure or continuing disclosure document for the Funding Loan Note or any of the documents relating to the Funding Loan Note to which the Borrower is a party, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Funding Loan Note of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading.

(k) The Bank's acceptance or administration of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties as Bank thereunder or under any of the documents relating to the Funding Loan Note to which it is a party.

**7.24.2** The liability of Borrower under this indemnity shall not be limited or impaired in any way by (a) the release, reconveyance, foreclosure or other termination of the Deed of Trust, the payment in full of the Borrower Loan, any bankruptcy or other bankruptcy proceeding, or any other event whatsoever; (b) any provision in the Borrower Loan Documents or the Funding Loan Documents or applicable law limiting Borrower's liability or any Indemnified Party's recourse or rights to a deficiency judgment; or (c) any change, extension, release, inaccuracy, breach or failure to perform by any party under the Borrower Loan Documents or the Funding Loan Documents. Borrower's liability hereunder is direct and primary and not secondary as a guarantor or surety.

**7.24.3** This indemnity is not intended to give rise to, and shall not give rise to, a right of Bank to claim payment of the principal and accrued interest with respect to the Borrower Loan as a result of an claim under this Section 7.24.

**7.24.4** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel

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

**7.24.5** Notwithstanding any transfer of the Property to another owner in accordance with the provisions of this Agreement, Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 7.24 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of Borrower hereunder.

**7.24.6** The rights of any persons to indemnity hereunder and to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan Note and, in the case of Bank, any resignation. The provisions of this Section 7.24 shall survive the termination of this Agreement.

**7.25 Performance of Acts.** Upon request by Bank, Borrower shall perform all acts that may be necessary or advisable to perfect any lien or security interest provided for in the Borrower Loan Documents or the Funding Loan Documents to carry out the intent of the Borrower Loan Documents or the Funding Loan Documents.

**7.26 Notice of Change.** Borrower shall give Bank prior written notice of any change in the location of Borrower's place of business (or Borrower's chief executive office if Borrower has more than one place of business) or Borrower's name, business structure or place of incorporation or other formation, and, unless otherwise approved by Bank in writing, Borrower shall maintain all tangible Personal Property (other than the books and records) at the Real Property and all books and records at Borrower's place of business (or chief executive office if Borrower has more than one place of business).

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

**7.28 Funding Loan Documents.** Borrower shall timely perform its obligations under the Funding Loan Documents.

**7.29 Regulatory Agreements.** Borrower hereby covenants and agrees (a) to comply with all provisions of the Regulatory Agreements; to advise Bank and Governmental Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Regulatory Agreements; (b) upon written direction by Governmental Lender, to cooperate fully and promptly with Governmental Lender in enforcing the terms and provisions of the Tax-Exempt Regulatory Agreement; and (c) to file in accordance with the time limits established by the Regulatory Agreements all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by the Tax-Exempt Regulatory Agreement. Neither Governmental Lender nor Bank shall incur any liability in the event of any breach or violation of any of the Regulatory Agreements by Borrower, and Borrower agrees to indemnify the Indemnified Parties from any claim or liability for any such breach under the Regulatory Agreements.

**7.30 Prohibited Activities.** Without Bank's prior written consent Borrower shall not:

**7.30.1** Engage in any business activities substantially different from Borrower's present business or liquidate or dissolve Borrower's business;

**7.30.2** Suffer or permit any liens or encumbrances to be placed on the Property other than the Permitted Liens.

**7.30.3** Borrower shall not merge or consolidate with or into, or enter into any partnership, joint venture, syndicate or similar business arrangement with, any Person or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

**7.30.4** Transfer any interest in the Property (other than the lease of residential units within the Property for a term of one-year or less and otherwise in compliance with the Ground Lease, the Regulatory Agreements and dispositions of Personal Property expressly permitted by the Borrower Loan Documents) without the prior written consent of Bank, which consent may be withheld in Bank's absolute discretion. In connection with the foregoing consent requirements, Borrower acknowledges that Bank relied upon Borrower's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion and operation of the Property. Transfers requiring Bank's prior written consent shall include, without limitation, (a) involuntary transfers and transfers by operation of law; (b) liens and assignments as security for obligations, whether voluntary or involuntary; and (c) except as otherwise expressly permitted by the terms of the Deed of Trust, the issuance, sale, assignment, disposition, encumbering or other transfer of any direct or indirect ownership interest in Borrower, any Loan Party or any general partner, member or shareholder of any Loan Party, whether voluntary or involuntary, by operation of law or otherwise. No sale, lease or other transfer shall relieve Borrower from primary liability for its obligations under the Borrower Loan Documents or the Funding Loan Documents, and Borrower shall deliver to Bank all documents reasonably required by Governmental Lender to evidence its continuing liability. No consent by Bank in connection with any Transfer shall constitute (x) a consent by Governmental Lender under the Tax-Exempt Regulatory Agreement to any sale, assignment, encumbrance, transfer or other disposition of all or any part of the Property, or any direct or indirect interest therein, or (y) a waiver by Governmental Lender of any term or condition of the Tax-Exempt Regulatory Agreement. Notwithstanding the foregoing, (i) Tax Credit Investor may transfer its limited partnership interests in Borrower to any limited partnership or limited liability company in which Tax Credit Investor or an affiliate thereof is the general partner or managing member, (ii) the transfer of limited partnership interests or non-managing membership interest in Tax Credit Investor shall not constitute a "transfer" hereunder, (iii) subject to Bank's consent, which shall not be unreasonably withheld, Tax Credit Investor may remove and replace the General Partner in accordance with the Partnership Agreement following a default by the General Partner thereunder; and (iv) General Partner may pledge its general partnership interest in Borrower to the Tax Credit Investor, provided that such pledge shall be subject and subordinate to General Partner's pledge to Bank pursuant to the Assignment of Partnership Interest (GP).

**7.30.5** Amend or modify in any material respect any organizational documents pertaining to Borrower or any Loan Party. Notwithstanding the foregoing, Borrower may modify its partnership agreement solely to reflect a permitted transfer described herein provided, (a) no additional changes are made thereto, and (b) copies of any such modifications are provided to Bank within ten (10) days of execution.

**7.30.6** Cause or otherwise consent to the formation of any community facilities district that includes the Property or any part of the Property pursuant to the Mello-Roos Community Facilities Act of 1982, any assessment district that includes the Property or any part of the Property pursuant to the Municipal Improvement Act of 1913, or any other comparable or similar district, area or territory that includes the Property or any part of the Property pursuant to any Law, or cause or otherwise consent to the levying of special taxes by any community facilities district against the Property or any part thereof, the levying of assessments by any such assessment district against the Property or any part thereof, or the levying of assessments, taxes and/or other impositions by any such district, area or territory.

**7.30.7** Enter into any new Funding Loan Documents or Subordinate Documents, or amend, modify, supplement, cancel or terminate any Funding Loan Documents, Subordinate Documents, the AHAP Contract or the HAP Contract.



**7.30.8** Take, or omit to take, any action that, if taken or omitted, would jeopardize or adversely affect the tax-exempt status of the interest payable on the Funding Loan Note.

**7.30.9** Accept any deed or other restriction or enter into any regulatory or other similar agreement regulating or restricting the use or operation of the Property or restricting the tenant income and/or rent levels for the Property in connection with the allocation to the Property of federal low-income housing tax credits or otherwise.

**7.31 Set Aside Letters.** In the event Bank issues, at Borrower's request, any Set Aside Letter, Borrower represents, warrants and agrees as follows:

**7.31.1** The sum that Borrower requests Bank to allocate for Bonded Work shall be sufficient to pay for the costs of construction and completion of the Bonded Work in accordance with any agreement between Borrower and the Governmental Authority and a copy of such agreement shall be furnished to Bank by Borrower as a condition precedent to the issuance by Bank of any Set Aside Letter;

**7.31.2** Bank is irrevocably and unconditionally authorized to disburse to the Governmental Authority or Surety all or any portion of proceeds of the Borrower Loan upon a demand of the Governmental Authority or Surety made in accordance with the terms and conditions of the Set Aside Letter;

**7.31.3** Any disbursement or payments that Bank makes or may be obligated to make under any Set Aside Letter, whether made directly to the Governmental Authority, Surety, or to others for completion of all or part of the Bonded Work, shall be deemed an Advance to or for the benefit of Borrower; and

**7.31.4** Bank shall have no obligation to release any security under the Borrower Loan Documents unless and until Bank has received a full and final written release of its obligations under each Set Aside Letter.

**7.31.5** The fee for issuing each Set Aside Letter hereunder shall be determined when each Set Aside Letter is issued by Bank.

**7.32 Management of Property.** Borrower shall not enter into any agreement providing for the management or operation of the Real Property or the Improvements without the prior written consent of Bank.

**7.33 Leases.**

**7.33.1 Negative Covenants.** In addition to the provisions of the Deed of Trust, and regardless of whether or not Bank's prior written approval is required, Borrower shall not, without Bank's prior written consent: (a) grant to any tenant any right or option to purchase the Property or any portion thereof, or any other present or future interest in any portion of the Property other than the right to use and occupy the leased premises, (b) grant to any tenant the right to terminate its lease if the lease of one or more other tenant is terminated, or (c) accept payment of rent from any tenant in any form other than cash or cash equivalent.

**7.33.2 Affirmative Covenants.** In addition to the provisions of the Deed of Trust, Borrower shall (a) document all Leases covering any portion of the Property or the Improvements on a standard lease form approved by Bank (with no material change), (b) not enter into any lease for any Unit with a potential tenant unless such lease is an Acceptable Unit Lease and the rent charged thereunder complies with the Subordinate Documents, the Ground Lease, all Regulatory Agreements and is consistent with the rent proforma submitted by Borrower and approved by Bank (c) enter into Leases only with bona fide third party tenants in an arm's length transaction at the then current rates for comparable space in accordance with the Rent Restrictions and on such other terms and conditions as are reasonably acceptable to Bank, (d) whether or not Bank's prior written approval is required, deliver to Bank, within ten

days of written request, all Leases (together with all financial information obtained by Borrower regarding the tenant) and all modifications, amendments and consents to assignment or subletting of existing Leases, and (e) upon Bank's request, promptly notify Bank in writing of (i) the termination, abandonment, or surrender of any Lease, and (ii) claims of any breach of any of Borrower's obligations as landlord under any Lease.

**7.34 Compliance.** Upon the request of Bank from time to time and at any time certification of the matters set forth below is provided to Governmental Lender or any Governmental Authority, Borrower shall promptly provide to Bank the following:

**7.34.1** Borrower's certification of the Property's compliance with the rules qualifying the interest payable on the Funding Loan Note for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued under Section 142(d) and the requirements of the Regulatory Agreements;

**7.34.2** Property has received or receives a tax credit allocation, Borrower's certification of the Property's compliance with the requirements of Section 42 of the Code and the regulations issued under Section 42 and if the tax credits have not yet been syndicated, Borrower's report regarding progress in syndicating the tax credit allocation until the syndication is completed; and

**7.34.3** Such other documents, certificates and other information as may be deemed necessary or appropriate to enable Bank to perform the functions under this Agreement or the Funding Loan Agreement.

**7.35 Property Reserves.** Borrower shall establish and maintain such operating, capital improvement and/or tenant improvement for the Property as required by Bank, and Borrower hereby grants to Bank a security interest in all such reserves. Borrower agrees to execute such supplemental security documentation as Bank may request confirming such security interest.

**7.36 HCD Loan Agreement.** Prior to the Conversion Date, Borrower shall comply with all conditions of the HCD Loan Agreement, and shall execute all documents necessary to close the HCD Loan.

**7.37 Establishment of Capital Improvement Reserve Account.**

**7.37.1** Concurrently with the Conversion and as a condition precedent thereto, Borrower shall: (i) establish with Bank the Capital Improvement Reserve Account and Borrower shall execute such documents as are necessary to evidence same and to create and perfect in favor of Bank a security interest therein for the purpose of paying for any capital improvements which are necessary for the continued operation of the Property and which capital improvements are approved by Bank, which approval will not be unreasonably withheld ("Capital Improvements"); and (ii) commencing after the Conversion Date, on the first day of the month in which Borrower is required to make its first principal and interest payment under the Borrower Note, and continuing on the first day of every month thereafter, deposit or cause to be deposited into the Capital Improvement Reserve Account an amount equal to no less than \$2,959 each month.

**7.37.2** Borrower shall be entitled to withdraw funds from the Capital Improvement Reserve Account in excess of \$10,000 from time to time (but no more often than once every thirty (30) days and in an amount of no less than \$1,000 for each such withdrawal) to cover Capital Improvements, but only upon ten (10) days prior written notice from Borrower to Bank requesting to withdraw such funds and only so long as no Event of Default exists and no event has occurred that, with the giving of notice or the passage of time, or both, would constitute an Event of Default. Said written request shall set forth the amount of funds Borrower wishes to withdraw from the Capital Improvement Reserve Account, shall set forth with specificity those Capital Improvements for which the funds are to be used and shall be accompanied by copies of invoices or other evidence satisfactory to Bank confirming the cost of such Capital Improvements. Bank may also condition the withdrawal of funds in excess of \$10,000 from the Capital Improvement Reserve Account upon delivery by Borrower of such contractor's affidavits, owner's sworn statements,

partial and final waivers of lien and other additional documentation Bank may require to insure that the Capital Improvements have been completed free and clear of any claims of lien, and in a good and workmanlike manner and otherwise in accordance with all applicable legal requirements. The disbursement of funds withdrawn from the Capital Improvements Reserve Account may be made, in Bank's discretion, either directly to the parties entitled thereto or to Borrower to pay the same. If such funds are disbursed directly to Borrower, Borrower shall provide Bank with evidence of the payment of the cost of the Capital Improvements within ten (10) days after the date such funds are withdrawn from the Capital Improvement Reserve Account.

**7.37.3** Borrower shall diligently pursue completion of all Capital Improvements upon the commencement of the same. All Capital Improvements shall be made in a good and workmanlike manner and shall be completed free and clear of any mechanic's or materialman's liens and encumbrances. Borrower shall pay all costs necessary for completion of all Capital Improvements without regard to the sufficiency of the funds in the Capital Improvement Reserve Account. Borrower shall not commence construction of any Capital Improvement or other work prior to obtaining a building permit and all other governmental authorizations required with respect thereto, which Borrower shall provide to Bank upon request. Once any construction work has commenced, Borrower shall cause same to be completed in accordance with the plans and specifications therefor and in compliance with all restrictive covenants applicable thereto, free and clear of liens or claims for liens, and shall correct all defects therein. No disbursement of funds from the Capital Improvement Reserve Account shall constitute a waiver of Bank's right to require compliance with the foregoing covenants.

**7.38 Rent Restrictions.** Borrower shall comply, and cause the tenants occupying the Units to comply, with the Rent Restrictions, including, without limitation, maintaining all appropriate records.

**7.39 Preservation of Tax Credits.** Borrower shall observe and perform all obligations imposed on Borrower for the purpose of obtaining, maintaining and utilizing the maximum amount of Tax Credits allocated pursuant to the Tax Credit Allocation Documents and to operate the Project, or to cause the appropriate parties to operate the Project, in accordance with all applicable provisions of the Code and the R&T Code, if applicable, and all other statutes and regulations governing the Tax Credits including, without limitation, the monitoring and reporting requirements set forth in the Qualified Allocation Plan.

**7.40 Election of Credit Period.** Borrower shall not make its election (electing whether the first year of the ten (10) year "credit period" shall commence in the year the Project is placed in service or the following year) under Section 42(f) of the Code without first obtaining Bank's prior written consent to Borrower's election, which consent shall not be unreasonably withheld or delayed.

**7.41 Compliance with Subordinate Documents, Regulatory Agreements, AHAP Contract and HAP Contract.** Borrower shall observe and comply with all of the terms and conditions set forth in the Subordinate Documents, all Regulatory Agreements, the AHAP Contract and the HAP Contract (after the HAP Contract has been fully executed).

**7.42 Payment of Development Fee.** Borrower shall not pay Developer more than (i) \$335,154 of its development fee prior to the Closing Date, and (ii) \$2,781,383 of its development fee in the aggregate prior to the Conversion Date.

**7.43 IRS Form 8609.** Borrower shall deliver to Bank the IRS Form 8609 within five (5) business days following Borrower's receipt of the same from the Allocation Committee.

**7.44 Obtaining and Maintaining Real Property Tax Exemption.** Borrower shall cause General Partner to maintain its status as an "eligible limited liability company" (as such term is used in Section 214(g) of the R&T Code) and take all actions and provide such certifications as may be necessary from time to time so that the Project shall be exempt from the payment of real property taxes in accordance with the provisions of Section 214(g) of the R&T Code.

**7.45 Draws Under Subordinate Loans and Disbursement of Borrower's Funds.** Borrower shall request and receive disbursements of the entire amount of the Subordinate Loans (other than the HCD Loan) prior to requesting disbursements of Borrower's Funds.

**7.46 Ground Lease.** Borrower hereby covenants and agrees to comply with all provisions of the Ground Lease binding on Borrower, and to advise Bank and Governmental Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of Borrower set forth in the Ground Lease.

**7.47 Draw Requests.** Borrower shall furnish to Bank such statements and other financial data as Bank shall from time to time reasonably request in writing with respect to disbursements made under the Subordinate Loans, if any. Borrower shall deliver, or cause to be delivered, to Bank (concurrently with the delivery of the same to any Subordinate Lender) copies of all draw requests (and accompanying back-up documentation), if any, submitted to any Subordinate Lender with respect to disbursements made under the applicable Subordinate Loan from time to time.

**7.48 Progress Reports and Annual Project Status Reports; Allocation Committee Notices.** Borrower shall promptly deliver to Bank copies of all "Progress Reports" all "Annual Project Status Reports" and all other reports delivered by Borrower to the Allocation Committee or Subordinate Lender from time to time including, without limitation, those reports required by the terms and conditions of the Qualified Allocation Plan or as otherwise required under the terms of the Tax Credit Allocation Documents; such reports shall be delivered to Bank concurrently with the delivery of the same to the Allocation Committee. Borrower shall promptly deliver to Bank copies of all notices and/or correspondence it receives from time to time from the Allocation Committee to the extent the same relate to the allocation of Tax Credits as evidenced by the Carryover Allocation.

**7.49 Hedge.**

**7.49.1** As a condition precedent to making the Borrower Loan, the Borrower shall enter into one or more interest rate caps, collars, swaps, swaptions, forward swaps or similar transactions designed to protect against fluctuations in the interest rate of Borrower Note commencing no later than the Initial Outside Conversion Date, or if Borrower elects to extend the Initial Outside Conversion Date pursuant to Section 2.6 above, the First Extended Outside Conversion Date, and expiring no earlier than the Maturity Date, or if Borrower elects to extend the First Extended Outside Conversion Date pursuant to Section 2.7 above, the Second Extended Outside Conversion Date, and expiring no earlier than the Maturity Date, with a counterparty acceptable to Bank (which counterparty may, but is not required to be, Bank) (together, as modified from time to time, the "Hedge"). The notional amount of the Hedge must be the outstanding principal amount of the Borrower Note as of the Outside Conversion Date or, if later, the effective date of the Hedge. The Hedge shall provide for a fixed rate of interest not to exceed (or otherwise protect against the interest rate on the Borrower Note)  [CHECK]% (inclusive of the Margin). The cost of the Hedge must be paid in full on its effective date. The identity of the counterparty and the form and substance of the documents and agreements evidencing, securing, guarantying or otherwise governing the Hedge, including, without limitation, any ISDA Master Agreement and Schedule thereto, and any confirmations evidencing the Hedge (together, the "Hedge Documents"), shall be acceptable to Bank in the Bank's sole discretion. In no event shall the counterparty have a rating by a national rating agency which is less than the rating assigned by such rating agency to Bank. No Hedge Document shall be secured by the Project unless expressly consented to in writing by Bank, which consent may be withheld in Bank's sole discretion.

**7.49.2** On the Closing Date, the Borrower shall acquire a Hedge complying with the requirements of this Section 7.48 and Section 4.1.17. As a condition to the extension of the Initial Outside Conversion Date in accordance with Section 2.6 above, the Hedge shall comply with the requirements of this Section 7.48 and Section 2.6.9. As a condition to the extension of the First Outside Conversion Date in accordance with Section 2.7 above, the Hedge shall comply with the requirements of this Section 7.48 and Section 2.7.9. As a condition to the Conversion, the Hedge shall comply with the requirements of this Section 7.48 and Section (u) of Exhibit D.

**7.49.3** The Borrower shall timely perform all of its obligations under the Hedge Document in accordance with its terms, including payment of all breakage and termination fees due under the applicable Hedge Documents. Unless Bank is the counterparty, the Borrower may not exercise any right or remedy under any Hedge Document without the Bank's prior written consent and shall exercise its rights and remedies under the Hedge Documents as directed by the Bank in writing.

**7.49.4** So long as the Borrower is required to maintain a Hedge, the Borrower shall not terminate, transfer or consent to any termination or transfer of the Hedge without the Bank's prior written consent, which consent may be withheld in Bank's sole discretion. No Hedge shall be terminated for any reason unless Borrower enters into a new Hedge complying with the requirements of this Section 7.48; provided, that no Hedge undertaken with Bank may be terminated, terminated and replaced or transferred by the Borrower without the consent of Bank, which consent may be withheld by Bank in its sole discretion. Each replacement Hedge must have a term which commences no later than the later of the Outside Conversion Date or the termination date of the preceding Hedge. If Borrower desires to transfer or terminate a Hedge, Borrower shall provide Bank for Bank's approval written notice thereof at least forty-five (45) days prior to termination of the existing Hedge, together with a description of the terms proposed for the replacement Hedge and the identity of the financial institutions who will bid to be the counterparty on the replacement Hedge. In addition, the Borrower shall provide the Bank for Bank's approval the identity of the counterparty and copies of the proposed replacement Hedge Documents at least fourteen (14) business days prior to the termination of the existing Hedge; provided, however, that if a Hedge unexpectedly and unavoidably terminates on a date other than its scheduled expiration date, the Borrower shall, within fourteen (14) business days of such termination, obtain a new Hedge satisfying the requirements of this Section 7.48; provided that if such terminated Hedge is one provided by Bank, Bank shall be under no obligation to permit such replacement Hedge to be entered into or to forbear from exercising its creditor remedies during such time.

**7.49.5** If Bank is not (or is no longer) the counterparty to the Hedge, the Borrower shall assign each Hedge in effect from time to time to Governmental Lender and Bank pursuant to an assignment of hedge ("Assignment of Hedge") in a form and content acceptable to Bank in its sole discretion. The Assignment of Hedge must be entered into on or before the effective date of the Hedge. The Hedge Documents and the Assignment of Hedge shall direct the counterparty to make any payments on the Hedge directly to Bank to be applied by Bank to payments due under the Borrower Loan, provided that after the occurrence of an Event of Default, Bank may apply such payments as may determine in its discretion.

**7.50 Compliance with the AHAP Contract and HAP Contract.** Borrower hereby agrees to observe and comply with all provisions of the AHAP Contract and the HAP Contract. Borrower shall advise Bank in writing promptly upon learning of any default with respect to the AHAP Contract and the HAP Contract.

**7.51 Funding of HCD Loan.** Upon funding (partial or full) of the HCD Loan, Borrower shall promptly deliver to Bank the net proceeds of such loan funding to pay down the outstanding balance of the Borrower Loan.

**7.52 Reserve Accounts.** Borrower hereby agrees to maintain all Bank accounts, including any reserve accounts, with the Bank.

**7.53 Environmental Remediation.** Borrower shall comply at all times with all remediation plans listed on Exhibit C to the ECA.

**8. EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder and at Bank's option, exercisable in its sole discretion, shall terminate any obligation of Bank to make any Advance or disbursement of Borrower's Funds. Upon the occurrence of an Event of Default, Bank shall also have the option, exercisable in its sole discretion, to declare the Borrower Loan immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demand of any kind or character; provided,

however, upon the occurrence of any Event of Default that, under the terms of any Borrower Loan Document or Funding Loan Document results in the Borrower Loan becoming automatically due and payable, such occurrence shall result in automatic acceleration of payments of all principal and interest due under the Borrower Loan:

**8.1** Borrower fails to (a) pay when due any sums payable under any Borrower Loan Document or Funding Loan Document after giving effect to any express curative provisions (if any) provided herein or therein and, in the case of payments other than principal or interest, in the event that there is no curative provision, within ten (10) days after when due, or (b) deposit with Bank within ten (10) days of when due any of Borrower's Funds as and when required under this Agreement.

**8.2** Borrower has breached, or defaulted under, any term, condition or provision contained in (a) any Borrower Loan Document that is not specifically referred to in this Section 8, and such breach or default continues uncured after any applicable notice and cure periods (or, if no notice or cure period is stated, continues uncured for more than thirty (30) days after notice), provided, however, that if such breach cannot reasonably be cured within the applicable cure period, no Event of Default shall be deemed to have been committed hereunder if Borrower commences to cure such breach within the applicable cure period and thereafter diligently prosecutes such cure to completion, provided that, in all events, the cure of such default shall be completed to the satisfaction of Bank not later than sixty (60) days in the aggregate from the date of such default, (b) the Tax-Exempt Regulatory Agreement or other Funding Loan Document, or (c) the Ground Lease.

**8.3** Borrower or Contractor does not (a) commence construction of the Improvements within the time period required in this Agreement, (b) proceed diligently and continuously with the construction of the Improvements, or the construction of the Improvements is otherwise discontinued for a period of ten (10) consecutive Business Days or more, for any reason other than Force Majeure, or (c) complete the construction of the Improvements and cause the issuance of all licenses and permits necessary for the occupancy and use of the Improvements, on or before the Completion Date.

**8.4** Any representation or warranty by Borrower or any Loan Party made hereunder or under any other Borrower Loan Document proves to be materially false or misleading.

**8.5** Any person obtains an order or decree in any court of competent jurisdiction prohibiting the construction of the Improvements or Borrower or Governmental Lender and Bank from performing this Agreement, and such order or decree is not vacated within ten days after the granting thereof.

**8.6** Borrower neglects, fails or refuses to keep in full force and effect any permit or approval with respect to the construction of the Improvements or the use and occupancy thereof and such failure continues for thirty (30) days after Borrower obtains actual knowledge thereof.

**8.7** Any bonded notice to withhold in connection with the Borrower Loan is validly served on Governmental Lender or Bank and within five days of the receipt of such service (a) is not discharged, or (b) if the amount claimed is disputed in good faith by Borrower or Contractor, an appropriate counter bond or equivalent acceptable to Bank is not provided to Bank.

**8.8** The imposition, voluntary or involuntary, of any lien or encumbrance upon the Property without Bank's written consent, unless an adequate counter bond is provided and such lien is accordingly released within ten (10) days of the imposition of such lien.

**8.9** Bank fails to have an enforceable first lien on or security interest in any property given as security for the Borrower Loan, except as permitted by Bank in writing.

**8.10** An event or condition occurs or arises that materially impairs Borrower's intended use of the Property and such condition is not remedied within thirty (30) days.

**8.11** Borrower neglects, fails or refuses to keep in force and effect any insurance coverage required by Bank.

**8.12** Any Funding Loan Document is amended, modified or terminated without Bank's prior written consent.

**8.13** Interest on the Funding Loan Note is no longer excludable from the gross income of the holder thereof for federal income tax purposes.

**8.14** Borrower modifies, amends or terminates, or otherwise fails to consummate the closing of, the HCD Loan or the AHP Loan, or takes any action that might or does result in modification, amendment, termination or expiration of the HCD Loan Agreement or the AHP Documents without Bank's written consent.

**8.15** The occurrence of an event of default by Borrower under the Subordinate Documents, the AHAP Contract, the HAP Contract (after the HAP Contract has been fully executed, or Regulatory Agreement(s) (following the expiration of any curative periods set forth therein).

**8.16** The Subordinate Documents, the AHAP Contract, the HAP Contract (after the HAP Contract has been fully executed), or the Regulatory Agreement(s) are modified, amended or terminated without the prior written consent of Bank, except for modifications or amendments of the AHAP Contract or HAP Contract that only have the effect of extending the term of the AHAP Contract or HAP Contract.

**8.17** The failure of Borrower to comply with any of the terms and conditions of the Tax Credit Allocation Documents, the failure of Borrower to cause Project Completion to occur on or before the Completion Date, or the failure of Borrower to comply with any of the monitoring or reporting requirements set forth in the Qualified Allocation Plan.

**8.18** The determination by Bank (in Bank's reasonable opinion) at any time that (i) paragraph (1) of Section 42(h) of the Code will apply to the allocation of the Tax Credits or (ii) Project Completion will not occur on or before the Completion Date.

**8.19** The maximum amount of Tax Credits reserved by the Allocation Committee under the Preliminary Reservation is reduced by the Allocation Committee which results in a reduction of the Tax Credit Investor's capital contributions to Borrower which, together with other financing or equity investment permitted under the Borrower Loan Documents, would prevent Borrower from making the full Paydown Amount on or before the Outside Conversion Date, as determined by Bank in its sole discretion.

**8.20** Borrower shall fail to obtain the Hedge in accordance with the terms and provisions of Section 7.48. Borrower shall fail to perform any of its obligations under any agreement relating to any Hedge or Hedge Documents following the expiration of any applicable curative provision.

**8.21** Borrower fails to satisfy the conditions to Conversion in accordance with Section 3.2 above on or before the Outside Conversion Date.

**8.22** Borrower modifies, amends or terminates the Ground Lease without the prior written consent of the Bank.

The Tax Credit Investor shall have the right to cure any default by Borrower hereunder within the time periods (if any) set forth herein for such cure and Bank agrees to accept such cure as if cured by Borrower.

**9. REMEDIES.** If an Event of Default occurs under this Agreement:

**9.1** Governmental Lender and Bank may exercise any right or remedy that it has under any of the Borrower Loan Documents, or that is otherwise available at law or in equity or by statute (which may be exercised directly or by directing the actions of the Fiscal Agent), and all of Governmental Lender's and Bank's rights and remedies shall be cumulative.

**9.2** Bank shall have the right, in its sole discretion, to enter the Property and take possession of it, whether in person, by agent or by court-appointed receiver, to perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and to collect rents and otherwise protect its collateral and exercise its rights and remedies under the Borrower Loan Documents. If Bank exercises any of the rights or remedies provided in this Section, that exercise shall not make Bank a partner or joint venturer of Borrower. All sums that are expended by Bank in completing the Improvements or in preserving Bank's collateral for the Borrower Loan shall be considered an additional loan to Borrower secured by the Deed of Trust and Security Documents and shall bear interest at the Default Rate.

**9.3** Notwithstanding the exercise of any remedy described above or the existence of any Event of Default, Bank, at its option, may make any Advance or disburse any or all of Borrower's Funds without (a) waiving Bank's right to demand payment of the Borrower Loan, (b) incurring liability to make any other or further Advances, and (c) waiving Bank's right to require compliance with Borrower's covenant to correct any defect in the Improvements or departure from the Plans not approved by Bank.

**10. POWER OF ATTORNEY.** Borrower hereby constitutes and appoints Bank as Borrower's true and lawful attorney in fact with the power and authority, including full power of substitution upon the occurrence and during the continuance of an Event of Default, as follows:

**10.1** To take possession of the Property and complete the Improvements or the Capital Improvements..

**10.2** To use any of Borrower's Funds and any undisbursed proceeds of the Borrower Loan for the purpose of completing the Improvements and for other costs related thereto and/or to use any of the funds in the Capital Improvement Reserve Account for the purpose of completing any Capital Improvements and for other costs related thereto.

**10.3** To make such additions and changes and corrections in the Plans as may be necessary or desirable, as Bank, in Bank's sole discretion, deems proper to complete the Improvements.

**10.4** To employ such contractors, subcontractors, agents, architects, engineers and inspectors as are required to complete the Improvements or any Capital Improvements.

**10.5** To employ security personnel to protect the Property from damage.

**10.6** To pay, settle or compromise all existing bills and claims against Borrower's Funds, the Capital Improvements Reserve Account or any undisbursed proceeds of the Borrower Loan as may be necessary or desirable or as Bank deems proper, in Bank's sole discretion, for the completion of the Improvements or any Capital Improvements, or for the protection or clearance of title to the Property, or for the protection of Bank's interest with respect thereto.

**10.7** To prosecute and defend all actions and proceedings in connection with the construction of the Improvements or any Capital Improvements.

**10.8** To record any notices of completion, cessation of labor and other notices that Bank deems necessary to protect any interest of Bank under the provisions of this Agreement, the Deed of Trust, any of the Security Documents, or any other Borrower Loan Document.



**10.9** To execute, acknowledge, and deliver all instruments and documents in the name of Borrower that may be necessary or desirable or as Bank deems proper, in Bank's sole discretion, and to perform any and every act with respect to the construction of the Improvements and/or any Capital Improvements that Borrower might perform on Borrower's own behalf.

This Power of Attorney is a power coupled with an interest and cannot be revoked. Any costs or expenses incurred by Bank in connection with any acts performed by Bank under or pursuant to this Section shall be paid by Borrower. If such costs are not paid by Borrower upon demand of Bank, interest shall accrue thereon at the Default Rate. Any such advances made or costs or expenses incurred by Bank shall be secured by the Deed of Trust and Security Documents.

## **11. MISCELLANEOUS.**

**11.1 Disclaimer.** WHETHER OR NOT GOVERNMENTAL LENDER OR BANK ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO GOVERNMENTAL LENDER OR BANK UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER GOVERNMENTAL LENDER NOR BANK SHALL BE LIABLE FOR THE CONSTRUCTION OF, OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT, THE IMPROVEMENTS.

**11.2 Notices.** All notices, demands, requests or other communications (including communications by facsimile transmission or e-mail) provided for or allowed hereunder shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), faxed, or e-mailed to the address given with the signatures at the end of this Agreement. Any such notice shall be deemed to have been received by the addressee, (a) if mailed, on the third day following the date of such mailing, or (b) if faxed or e-mailed, upon telephone confirmation of receipt. Any party may at any time change its address for such notices by delivery or mailing the other parties to this Agreement a notice of such change.

**11.3 Waivers.** Any forbearance, failure or delay by Bank in exercising any right, power or remedy shall not be deemed a waiver thereof and any single or partial exercise of any power, right or remedy shall not preclude any further exercise thereof. No waiver of or consent to any breach of any of the covenants or conditions of this Agreement or any other Borrower Loan Document shall be construed to be a waiver of or a consent to any previous or subsequent breach of the same or any other condition or covenant. No waiver or consent shall be effective under any Borrower Loan Document unless it is in writing and signed by an officer of Bank.

### **11.4 Governmental Lender's and Bank's Expenses; Rights of Governmental Lender and Bank.**

**11.4.1** Borrower shall promptly pay to Governmental Lender and Bank, upon demand, with interest thereon from the date of demand at the Default Rate, all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith and arising out of or in connection with the Borrower Loan Documents, including without limitation reasonable attorneys' fees (including the fees and costs of Governmental Lender's, Fiscal Agent's and Bank's in-house counsel and legal staff) and all costs and other expenses paid or incurred by Governmental Lender, Fiscal Agent and Bank in exercising its rights or remedies provided for in this Agreement or any other Borrower Loan Document. If at any time Borrower fails to perform any of its obligations hereunder, Bank shall have the right, but not the obligation, to perform such obligations at the expense of Borrower. The amount of any monies so expended or obligations so incurred by Governmental Lender, Fiscal Agent and Bank, together with interest thereon at the Default Rate, shall be repaid to Governmental Lender, Fiscal Agent and Bank promptly upon demand and payment thereof shall be secured by the Deed of Trust and Security Documents. The obligations of this Section 11.4.1 and those in Section 7.24 (Indemnification) shall remain valid and in effect notwithstanding repayment of the Borrower Loan or the Funding Loan Notes or termination of this Agreement or the Funding Loan Agreement.

**11.4.2** Governmental Lender and Bank, and any of Governmental Lender's and Bank's representatives, shall have the right, at any time and from time to time, and without notice, to enter upon the Property, to inspect the Improvements and all materials to be used in the construction thereof and to examine the Plans and all detailed plans and shop drawings that are or may be kept at the construction site.

**11.5 No Third Party.** This Agreement is made for the sole benefit of Borrower, Governmental Lender, Bank and Governmental Lender's and Bank's successors and assigns, and no other Person shall have any rights or remedies under or by reason of this Agreement or any right to exercise any right or power of Governmental Lender and Bank hereunder or arising from any default by Borrower. Governmental Lender and Bank shall owe no duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements nor any duty whatsoever to apply any undisbursed proceeds of the Borrower Loan to the payment of any such claim or to exercise any right or power of Bank hereunder or arising from any default by Borrower.

**11.6 Time of Essence.** Time is of the essence of this Agreement and every part hereof.

**11.7 Successors and Assigns.** Neither this Agreement nor any right of Borrower to receive any sums, proceeds or disbursements hereunder, may be assigned, pledged, hypothecated, anticipated or otherwise encumbered by Borrower without the prior written consent of Bank. Subject to the foregoing restriction and the restrictions contained in the Deed of Trust, this Agreement shall inure to the benefit of Governmental Lender and Bank and Governmental Lender's and Bank's successors and assigns and shall bind Borrower and Borrower's successors and assigns.

**11.8 Participation or Syndication.** Bank shall have the right, in its sole discretion, to assign all or any part of Bank's rights in the Borrower Loan and under the Borrower Loan Documents or the Funding Loan Documents, either through direct assignment or through participating interests, subject to the provisions of Section 4.3 of the Funding Loan Agreement. Bank is hereby authorized to disclose to any prospective assignee or participant in the Borrower Loan any and all information regarding Borrower, any Loan Party, the Property or the Borrower Loan.

**11.9 Governing Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located. Unless required by law or waived by Governmental Lender in writing, any action arising out of this Agreement or the Borrower Loan shall be filed and maintained in Santa Clara County, California.

**11.10 Entire Agreement.** This Agreement and all other Borrower Loan Documents and the Funding Loan Documents constitute the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all prior written or oral understandings. This Agreement and the other Borrower Loan Documents may be modified, amended or terminated only in writing signed by all parties hereto or thereto.

**11.11 Joint and Several Liability.** If Borrower consists of more than one Person, each shall be jointly and severally liable to Bank for the performance of this Agreement and the other Borrower Loan Documents.

**11.12 Publicity, Signs.** Borrower hereby agrees that Bank, at Bank's expense, may publicize the financing of the Property (including the name of Borrower) and, in connection therewith, may use the project name and address, and a description, photograph or other illustrative drawing of the Property. Borrower hereby grants Bank the right to erect or cause to be erected Bank's sign or signs in size and location desired by Bank on the Property so long as such sign or signs do not interfere with the construction of the Improvements. Borrower will exercise, and will cause Contractor and subcontractors to exercise, due care to protect said sign or signs from damage.

**11.13 Credit Information and Reports.** Borrower authorizes Bank to release information concerning Borrower's financial condition to suppliers, other creditors, credit bureaus and other credit reporters, and to obtain such information from any third party at any time.

**11.14 Headings.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

**11.15 Severability.** Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

**11.16 Counterparts.** This Agreement and each other Borrower Loan Document may be executed in two (2) or more counterparts, each of which shall be deemed an original but taken together shall be one and the same document.

**11.17 USA Patriot Act.** Bank is subject to the USA Patriot Act and hereby notifies Borrower that pursuant to the requirements of that Act, Bank is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Bank to identify Borrower in accordance with the Act.

**11.18 Waiver of Jury Trial.** To the extent permitted by law, in connection with any action or proceeding, whether brought in state or federal court, the Borrower, and Bank hereby expressly, intentionally and deliberately waive any right they may otherwise have to trial by jury of any Claim (as defined below).

**11.19 Judicial Reference.** If the waiver of jury trial set forth hereinabove is not enforceable under the laws of the state in which the Property is located, then the Borrower and Bank hereby agree that all Claims, including any and all questions of law or fact relating thereto, shall, at the written request of any party, be determined by Reference (as hereinafter defined) as set forth hereinbelow:

**11.19.1 Selection Or Appointment Of Referee.** The Bank and Borrower shall select a single neutral referee, who shall be a retired state or federal judge. In the event that the Bank and Borrower cannot agree upon a referee, the referee shall be appointed by the court.

**11.19.2 Conduct Of Reference.** Except as otherwise provided in this Agreement, the Reference shall be conducted pursuant to the laws of the state in which the Property is located. The referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of the Borrower Loan Documents or Funding Loan Documents. The referee shall report a statement of decision to the court. The Bank and Borrower shall equally bear the fees and expenses of the referee, unless the referee otherwise provides in the statement of decision.

**11.19.3 Provisional Remedies, Self-Help And Foreclosure.** No provision of this Agreement shall limit the right of any party to (i) exercise self-help remedies including, without limitation, set-off, (ii) foreclose against or sell any collateral, by power of sale or otherwise or (iii) obtain or oppose provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference. The exercise of, or opposition to, any such remedy does not waive the right of any party to a Reference pursuant to this Agreement.

**11.19.4 No Decision By Jury.** The Borrower and Bank hereby acknowledge that if a referee is selected or appointed to determine the Claims, then the Claims will not be decided by a jury.

**11.19.5 Miscellaneous.** In the event that multiple Claims are asserted, some of which are not subject to this Section, the parties agree to stay the proceedings of the Claims not subject to this Section until all other Claims are resolved in accordance with this Section. In the event that Claims are asserted against multiple parties, some of whom are not subject to this Section, the Parties agree to sever the Claims subject to this Section and resolve them in accordance with this Section.

**11.19.6 Claim.** “Claim” shall mean any claim, cause of action, action, dispute or controversy between or among the parties, whether sounding in contract, tort or otherwise, which arises out of or relates to: (i) any of the Borrower Loan Documents or the Funding Loan Documents; (ii) and negotiations or communications relating to any of the Borrower Loan Documents or the Funding Loan Documents, whether or not incorporated into the Borrower Loan Documents or the Funding Loan Documents or any indebtedness evidenced thereby; or (iii) any alleged agreements, promises, representations or transactions in connection therewith.

**11.19.7 Reference.** “Reference” shall mean a judicial reference conducted pursuant to this Agreement and in accordance with the laws of the state in which the Property is located, as in effect at the time the referee is selected or appointed.

**11.20 Limitation on Damages.** In the event that punitive damages are permitted under the laws of the state in which the Property is located, the amount thereof shall not exceed a sum equal to three times the amount of actual damages.

**11.21 Exhibits.** All exhibits attached hereto are incorporated herein as if fully set forth within this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Construction and Permanent Loan Agreement as of the date and year first above written.

**BORROWER:**

QUETZAL GARDENS, 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

**Address for Notice to Borrower:**

Quetzal Gardens, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, CA 94704  
Attention: Executive Director  
Telephone No.: (510) 841-4410  
Fax No.: (510) 548-3502

**with a copy to:**

Red Stone Equity Manager, LLC  
c/o Red Stone Equity Partners, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

**BANK:**

**MUFG UNION BANK, N.A.,**

By: \_\_\_\_\_  
Name: Brian Frankel, Vice President

**Addresses for Notice to Bank:**

MUFG Union Bank, N.A.  
Attn: Manager  
Loan Administration Department  
145 S. State College Blvd., Suite 600  
Brea, CA 92821  
Fax No. (949) 553-7123

With a copy to

MUFG Union Bank, N.A.  
Attn: CDF Manager  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596-3570  
Fax (925) 947-2455  
Phone No. (925) 947-2449  
E-mail address: [brian.frankel@unionbank.com](mailto:brian.frankel@unionbank.com)

**GOVERNMENTAL LENDER:**

**CITY OF SAN JOSE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Director of Finance

**Addresses for Notice to Governmental Lender:**

City of San Jose  
Finance Department  
200 East Santa Clara Street, 13<sup>th</sup> Floor Tower  
San Jose, CA 95113-1905  
Attention: \_\_\_\_\_

**JOINDER REGARDING DEVELOPMENT FEE**

The undersigned hereby acknowledges and agrees that the undersigned shall not be entitled to receive in the aggregate more than \$335,154 of the development fee to which it is entitled from Borrower prior to the Closing Date, and \$2,781,383 of its development fee in the aggregate prior to the Conversion Date, any portion of such development fee received by the undersigned prior to Conversion shall be remitted to MUFG Union Bank, N.A. to be held as additional collateral for the Borrower Loan and, upon an event of default with respect thereto, applied in reduction of amounts outstanding under the Borrower Loan in such amounts and in such order as MUFG Union Bank, N.A. shall elect in its sole and absolute discretion.

[SIGNATURE PAGE FOLLOWS]



**RESOURCES FOR COMMUNITY DEVELOPMENT,**  
a California nonprofit public benefit corporation

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

**Schedule 1**

**Post Conversion Date Borrower Note Installments of Principal and Interest**

[To be attached on the Conversion Date]

**EXHIBIT A  
LEGAL DESCRIPTION**

This **Exhibit A** is attached to and a part of that certain Construction and Permanent Loan Agreement dated November 1, 2019 by and among Quetzal Gardens, L.P., a California limited partnership, City of San Jose and MUFG Union Bank, N.A.

**[CHECK – to be inserted]**

**EXHIBIT B  
DISBURSEMENT SCHEDULE**

This **Exhibit B** is attached to and a part of that certain Construction and Permanent Loan Agreement dated November 1, 2019 by and among Quetzal Gardens, L.P., a California limited partnership, City of San Jose and MUFG Union Bank, N.A. All terms not defined herein shall have the meanings given them in the Agreement.

**[CHECK – to be prepared upon finalization of Project Budget]**

**EXHIBIT B-1  
PROJECT BUDGET**

This **Exhibit B-1** is attached to and a part of that certain Construction and Permanent Loan Agreement dated November 1, 2019 by and among Quetzal Gardens, L.P., a California limited partnership, City of San Jose and MUFG Union Bank, N.A. All terms not defined herein shall have the meanings given them in the Agreement.

**[CHECK – to be inserted upon finalization]**

**EXHIBIT C  
SPECIAL CONDITIONS**

1. The following representations and warranties are incorporated by reference in Section 6 of this Agreement:

(a) The Project is located wholly within the City of San Jose, California.

(b) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Funding Loan Note. The Borrower intends to utilize the Project as multifamily rental housing during the Qualified Project Period (as defined in the Tax-Exempt Regulatory Agreement).

(c) Not in excess of two percent (2%) of the proceeds of the Borrower Loan will be used to pay costs of issuance of the Funding Loan Note.

(d) The acquisition, construction and operation of the Project in the manner presently contemplated and as described herein and in the Tax-Exempt Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be constructed and operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(e) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Governmental Lender for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Governmental Lender in any manner except to issue the Funding Loan Note in order to provide funds for the Borrower Loan.

(f) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project.

(g) The Borrower has contacted all "related persons" thereof (within the meaning of Section 147(a) of the Code) of which it is aware; and none of them shall, at any time, pursuant to any arrangement, formal or informal, acquire any interest in the Funding Loan Note in an amount related to the amount of the Borrower Loan.

(h) All of the proceeds from the Borrower Loan plus any income from the investment of the proceeds thereof will be used to pay or reimburse the Borrower for Project costs, and at least 97% of the proceeds of the Borrower Loan will be used to pay or reimburse the Borrower for Qualified Project Costs (as defined in the Tax-Exempt Regulatory Agreement) and less than 25% of such amount will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Borrower Loan are expended so as to qualify the Project as a "qualified residential rental project" within the meaning of Section 142(d) of the Code.

(i) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on the Funding Loan Note to be included in the gross income of the owners thereof for purposes of federal income taxation.

(j) The Borrower hereby represents and warrants that, within the meaning of Section 147(b) of the Code, the weighted average maturity of the Funding Loan Note does not exceed 120 percent

of the average reasonably expected economic life of the facilities being financed with the proceeds of the Funding Loan Note.

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

2. The following covenants of Borrower are incorporated by reference in Section 7 of this Agreement:

(a) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Governmental Lender or otherwise, any action with respect to the proceeds of the Funding Loan Note which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Funding Loan Note would have caused the Funding Loan Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(b) Payment of Governmental Lender Fees and Expenses.

(i) Borrower hereby agrees to pay to the Governmental Lender the amounts described in Section 7(a)) of the Tax-Exempt Regulatory Agreement.

(ii) The Borrower agrees to pay to the Governmental Lender, within fifteen (15) days after receipt of request for payment thereof, all reasonable out-of-pocket expenses of the Governmental Lender related to the Project and the financing thereof that are not otherwise required to be paid by the Borrower under the terms of this Agreement and are not paid from disbursements of the Borrower Loan, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Funding Loan.

(c) Tax Exempt Status of the Funding Loan Note.

(i) It is the intention of the Governmental Lender, Bank and the Borrower that interest on the Funding Loan Note shall be and remain excludable from gross income for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Bank and the Governmental Lender.

(ii) The Borrower covenants and agrees that it will not knowingly and willingly use or permit the use of any of the funds provided by the Governmental Lender or the Bank hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Funding Loan Note that would, or take or omit to take any other action that would cause the Funding Loan Note to be an "arbitrage bond" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149 of the Code and applicable regulations promulgated from time to time thereunder.

(iii) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section it is necessary to restrict or to limit the yield on the investment of any moneys held under the Funding Loan Agreement, the Borrower Loan Documents or otherwise by the Bank, the Borrower shall determine the limitations and so instruct the Bank in writing and cause the Bank to comply with those limitations.

(iv) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Tax Counsel or of counsel to the Governmental Lender, or of which it otherwise becomes aware, to fully comply with Section 148 of the Code.

(v) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State of California or federal law.

(vi) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions of this Borrower Loan Agreement and of the Tax-Exempt Regulatory Agreement, and that in any event, the requirements of this Borrower Loan Agreement and the Tax-Exempt Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(vii) The Borrower shall not purchase, and shall use its best efforts to prevent any guarantor of the Borrower from purchasing, pursuant to an arrangement, formal or informal, any interest in the Funding Loan Note in an amount related to the amount of the Borrower Loan.

(viii) The Borrower will use due diligence to complete the acquisition and construction of the Project and reasonably expects to fully expend the portion of the Borrower Loan by the Completion Date.

(ix) The Borrower will calculate or cause to be calculated, at the times required by the Code, any rebate due to the federal government in respect of the Funding Loan Note, and will make timely payment of any rebate amount due to the federal government.

(d) **Limited Liability.** The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, the Funding Loan Note or any of the other Funding Loan Documents or Borrower Loan Documents, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement. All obligations and any liability of the Governmental Lender shall be further limited as provided in Sections 4.1, 5.2 and 6.14 of the Funding Loan Agreement.



**EXHIBIT D  
CONDITIONS TO CONVERSION**

The following shall be the conditions precedent to conversion:

Conditions to Conversion	Check When Satisfied
(a) The final disbursement shall have occurred.	<input type="checkbox"/>
(b) All indebtedness incurred by the Borrower in connection with the Project, including, but not limited to, the Borrower Loan and any subordinate financing, shall be completely funded and, if applicable, converted to permanent financing.	<input type="checkbox"/>
(c) No material adverse change has occurred in the financial condition of Borrower or any other Loan Party, as evidenced by current Financial Statements provided by Borrower to Bank.	<input type="checkbox"/>
(d) All representations and warranties made by Borrower in the Borrower Loan Documents and the Funding Loan Documents shall be true and correct on and as of the Conversion Date as if made on and as of the Conversion Date (and, if required by Bank, Bank shall have received a certificate of Borrower to that effect).	<input type="checkbox"/>
(e) The Improvements shall not have been materially injured or damaged by fire or other casualty.	<input type="checkbox"/>
(f) Bank shall have received (A) such endorsements to the Title Policy as Bank may require which shall insure that the Improvements have been completed free of all mechanic's and materialmen's liens or claims thereof, or (B) such additional title policies with endorsements as Bank may require, with a liability limit of not less than the principal amount of the Borrower Loan, issued by Title Insurer, with coverage and in form satisfactory to Bank, insuring Governmental Lender's and Bank's interest under the Deed of Trust as a first lien on the Leasehold Estate, excepting only such items as shall have been approved in writing by Bank.	<input type="checkbox"/>
(g) Borrower delivers to Bank fully executed copies of any amendments or assignments affecting the formation documents of Borrower and, if applicable, its constituent general partners or members, to the extent not previously provided to and approved by Bank.	<input type="checkbox"/>
(h) Borrower provides Bank with current evidence of the insurance coverage required pursuant to this Agreement, provided that Borrower need not provide evidence of course of construction insurance and Borrower shall in addition provide evidence of business interruption and/or rental interruption insurance, as applicable.	<input type="checkbox"/>
(i) Bank shall have received the Paydown Amount in cash or current funds.	<input type="checkbox"/>

Conditions to Conversion		Check When Satisfied
(j)	During each month of the three-month period immediately preceding the Conversion Date; at least ninety percent (90%) of the Units within the Property shall have been leased to, and occupied by, third-party residential tenants under Acceptable Unit Leases executed by Borrower in strict compliance with the terms and conditions of this Agreement and the Regulatory Agreements as evidenced by the rent rolls delivered pursuant to Section 3.2.1 of the Agreement.	<input type="checkbox"/>
(k)	The Improvements shall have been completed in substantial accordance with the Plans free and clear of all liens other than Permitted Liens and Bank shall have received copies of the final certificates of occupancy for each Unit within the Property.	<input type="checkbox"/>
(l)	As of the Conversion Date, no Event of Default and no other event or condition that, with the giving of notice or the passage of time, or both, would become an Event of Default, shall have occurred and be continuing.	<input type="checkbox"/>
(m)	If required by Bank, a current survey of the Real Property, including dimensions and delineation of all the Improvements and location of all easements thereon, certified to and satisfactory to Bank and Title Insurer.	<input type="checkbox"/>
(n)	Guarantor has executed and delivered to Governmental Lender and Bank the Indemnity Agreement.	<input type="checkbox"/>
(o)	The Debt Coverage Ratio for the Property shall have been at least 1.20 to 1.00 for the ninety (90) consecutive days immediately prior to the Conversion Date (assuming (i) an annual rate of interest equal to [ ] [CHECK]% (inclusive of the Margin), and (ii) an amortization period of three hundred (300) months.	<input type="checkbox"/>
(p)	Borrower shall have established with Bank the Capital Improvement Reserve Account and collaterally assigned such account to Bank.	<input type="checkbox"/>
(q)	Borrower shall have paid to Bank all reasonable costs and expenses incurred by Bank and Fiscal Agent in connection with the Conversion.	<input type="checkbox"/>
(r)	Borrower delivers to Bank such other documentation, certifications, opinions and information as may be required by Bank.	<input type="checkbox"/>
(s)	If requested by Bank, Borrower shall have delivered to Bank evidence reasonably satisfactory to Bank demonstrating the Project is in compliance with all applicable provisions of the Code and the R&T Code pertaining to Tax Credits, if applicable, and all other statutes and regulations governing the Tax Credits including, without limitation, the monitoring and reporting requirements set forth in the Qualified Allocation Plan.	<input type="checkbox"/>

Conditions to Conversion		Check When Satisfied
(t)	If requested by Bank, (a) each Subordinate Lender shall have executed and delivered to Bank an estoppel certificate which shall contains such certifications similar to the estoppel certifications provided in the applicable Subordination Agreement, as Bank shall reasonably require with respect to the applicable Subordinate Documents, and (b) Tax Credit Investor shall have executed and delivered to Bank an estoppel certificate in form and substance reasonably acceptable to the Bank, which shall contain such certifications as Bank shall reasonably require with respect to Tax Credit Investor's obligations under the Partnership Agreement.	<input type="checkbox"/>
(u)	Borrower shall have entered into one or more Hedges, in form and content and from a counterparty complying with the provisions contained in Section 7.48, which shall provide for the Borrower to pay a fixed rate of interest no greater than [ ] [CHECK]% (including the Margin applicable during the Permanent Phase), on an amount not more than the entire outstanding principal balance of the Borrower Note for the period commencing no later than the Conversion Date through the Maturity Date.	<input type="checkbox"/>
(v)	Such evidence as Bank may require evidencing expenditure of Borrower's Equity on Project costs in accordance with this Agreement is at least \$[24,453,008] in the aggregate.	<input type="checkbox"/>
(w)	Borrower shall have entered into the HAP Contract on terms and conditions acceptable to Bank, and the HAP Contract shall have been collaterally assigned by the Borrower to the Bank pursuant to the Assignment of HAP Contract and the Housing Authority shall have consented to such assignment of the HAP Contract pursuant to the Assignment of HAP Contract.	<input type="checkbox"/>
(x)	Borrower shall have all out-of-pocket expenses, including but not limited to recording and filing fees, title insurance premiums, survey invoices, escrow fees, legal fees, appraisal and inspection fees in connection with the Conversion.	<input type="checkbox"/>
(y)	Borrower shall have established such reserves	