

HOME AND HOPWA LOAN AGREEMENT  
Third Avenue Apartments

This HOME and HOPWA Loan Agreement (the "Agreement") is dated \_\_\_\_\_, 2013, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and 1550 Third, L.P., a California limited partnership ("Borrower").

RECITALS

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

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

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

D. Borrower is the owner of that certain real property located at 1550 Third Avenue in the City of Walnut Creek, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct forty-eight (48) multifamily housing units on the Property, twenty-three (23) of which will be for rental to very low income households and extremely low income households, and one (1) manager's unit (the "Development"). The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

E. The County and Borrower are parties to a HOME Project Agreement dated September 20, 2013 (the "HOME Project Agreement"), pursuant to which the County agreed to lend HOME Funds to Borrower to assist in the construction of the Development. In furtherance of the HOME Project Agreement, Borrower desires to borrow Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) of HOME Funds from the County (the "HOME Loan"), and Two Hundred Fifty Thousand Dollars (\$250,000) of HOPWA Funds from the County (the "HOPWA Loan") for a total loan amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000) (the "Loan").

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

G. The Loan is being made to finance predevelopment and construction costs of the Development. Construction of the Development is intended to maintain the supply of affordable rental housing in Contra Costa County. Due to the assistance provided Borrower through the

Loan, the County is designating twenty-three (23) units as HOME-assisted units, two (2) of which are also HOPWA-assisted units (the "HOME-Assisted Units").

H. The City has prepared a mitigated negative declaration pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA").

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

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Adjusted City Loan" means, to the extent less than the full amount of the City Loan is funded, an amount equal to the actual principal amount loaned to Borrower by the City pursuant to the documents between Borrower and the City evidencing the City Loan minus any special repayment pursuant to Section 4(b) of the Intercreditor Agreement. If the full amount of the City Loan is funded and no portion is repaid as a special repayment pursuant to Section 3(b) of the Intercreditor Agreement, the Adjusted City Loan is equal to the City Loan.

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

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

(d) "Adjusted Housing Successor Loan" means, to the extent less than the full amount of the Housing Successor Loan is funded, an amount equal to the actual principal amount loaned to Borrower by the City pursuant to the documents between Borrower and the City evidencing the Housing Successor Loan minus any special repayment pursuant to Section 4(c) of the Intercreditor Agreement. If the full amount of the Housing Successor Loan is funded and no portion is repaid as a special repayment pursuant to Section 3(c) of the Intercreditor Agreement, the Adjusted Housing Successor Loan is equal to the Housing Successor Loan.

(e) "Adjusted MHSA Loan" means, to the extent less than the full amount of the MHSA Loan is funded, an amount equal to the actual principal amount loaned to Borrower

by CalHFA pursuant to the documents between Borrower and CalHFA evidencing the MHSA Loan. If the full amount of the MHSA Loan is funded, the Adjusted MHSA Loan is equal to the MHSA Loan.

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

(g) "AHAP" means the Agreement to Enter Housing Assistance Payment Contract between Borrower and the Housing Authority governing the commitment of project-based Section 8 rental assistance to the Development by the Housing Authority, as approved by HUD.

(h) "AHP Loan" has the meaning set forth in Section 1.1(l)(v).

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

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

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

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

(iv) fees paid to the Housing Authority for administration of the Housing Assistance Payment Contract governing the provision of Project-Based Section 8 Rental Assistance to the Development;

(v) fees paid to CalHFA for administration of the MHSA Loan;

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

(vii) the Partnership/Asset Fee;

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

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

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

(xi) maintenance and repair expenses and services;

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

(xiii) security services;

(xiv) advertising and marketing;

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

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

(xvii) payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 3.18;

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

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

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

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

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

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

(i) loan from the City, as the Successor Housing Agency to the Redevelopment Agency of the City of Walnut Creek pursuant to California Health and Safety

Code Section 34176(a), in the amount of One Million Three Hundred Eighty-Two Thousand Four Hundred Four Dollars (\$1,382,404) (the "Housing Successor Loan");

(ii) loan from the City in the amount of Two Million Seven Hundred Eleven Thousand Ninety-Six Dollars (\$2,711,096) (the "City Loan");

(iii) construction loan from Wells Fargo Bank, N. A. (the "Bank") in the approximate amount of Fourteen Million One Hundred Seventy-Two Thousand Seven Hundred Eleven Dollars (\$14,172,711) (the "Bank Loan");

(iv) loan of Mental Health Services Act ("MHSA") funds from the California Housing Finance Agency ("CalHFA") in the approximate amount of One Million Three Hundred Sixty-Eight Thousand Eight Hundred Sixty-Four Dollars (\$1,368,864) (the "MHSA Loan");

(v) Affordable Housing Program ("AHP") loan from Wells Fargo Financial Bank, N.A. in the approximate amount of Four Hundred Seventy Thousand Dollars (\$470,000) (the "AHP Loan");

(vi) Low Income Housing Tax Credit investor equity funds in the approximate amount of Fourteen Million Two Hundred Fifty-Seven Thousand Five Hundred Twenty-Nine Dollars (\$14,257,529) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(vii) capital contribution from Borrower's general partner in the approximate amount of One Hundred Dollars (\$100) (the "GP Capital Contribution");

(viii) contribution from Borrower's general partner of California Department of Developmental Services ("DDS") Grant funds in the approximate amount of Four Hundred Thousand Dollars (\$400,000) (the "DDS General Partner Contribution"); and

(ix) permanent loan from the California Community Reinvestment Corporation ("CCRC") in the approximate amount of One Million Eight Hundred Sixty-Four Thousand Eight Hundred Thirty Dollars (\$1,864,830) (the "CCRC Loan").

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

(n) "Bank" has the meaning set forth in Section 1.1(l)(iii).

(o) "Bank Loan" has the meaning set forth in Section 1.1(l)(iii).

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

percent (5%) of the bid price; and (iv) all Construction Plans.

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

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

(s) "CalHFA" has the meaning set forth in Section 1.1(l)(iv).

(t) "CCRC Loan" has the meaning set forth in Section 1.1(l)(ix).

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

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

(w) "City/County Loan" means the sum of the Adjusted HOME Loan, the adjusted HOPWA Loan, the Adjusted Housing Successor Loan, and the Adjusted City Loan.

(x) "City Loan" has the meaning in Section 1.1(l)(ii).

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

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

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

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

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

(dd) "County Net Proceeds Prorata Share" means the result obtained by dividing the sum of the Adjusted HOME Loan and Adjusted HOPWA Loan, by the City/County Loan.

(ee) "DDS General Partner Contribution" has the meaning set forth in Section 1.1(l)(viii).

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

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

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

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

(jj) "Extremely Low Income Household" has the meaning set forth in the Regulatory Agreement.

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

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

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

(nn) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the Final Cost Certification.

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

(pp) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:

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

(viii) the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and

(ix) condemnation awards for a taking of part or all of the Development for a temporary period.

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

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

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

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

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

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

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

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

(xx) "HOME Project Agreement" has the meaning set forth in Paragraph E of the Recitals.

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



(zz) "HOME Reporting Term" means the period beginning on the Completion Date and ending on the twenty-first (21<sup>st</sup>) anniversary of the Completion Date.

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

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

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

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

(eee) "HOPWA Term" means the period beginning on the date of this Agreement and ending on the tenth (10th) anniversary of the date of this Agreement.

(fff) "HOPWA Unit" means a unit in the Development restricted to occupancy by a HOPWA-Eligible Household, as further set forth in in the Regulatory Agreement.

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

(hhh) "Housing Successor Loan" has the meaning in Section 1.1(l)(i).

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

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

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

(lll) "Investor Limited Partner" means Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, its successors and assigns.

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

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

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

(ppp) "Marketing Plan" has the meaning set forth in Section 3.10.

(qqq) "MHSA Loan" has the meaning in Section 1.1(l)(iv).

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

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

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

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

(vvv) "Partnership Agreement" means the agreement between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.

(www) "Partnership/Asset Fee" means: (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period; and (ii) after expiration of the Fifteen Year Compliance Period, asset management fees payable to Borrower, in the amounts approved by the County as set forth in Section 3.19.

(xxx) "Permanent Conversion" means the date the Bank Loan is repaid.

(yyy) "Permanent Financing" means the sum of the following amounts: (i) the Loan; (ii) the City Loan; (iii) the Housing Successor Loan; (iv) the CCRC Loan; (v) the AHP Loan; (vi) the MHSA Loan; (vii) the Tax Credit Investor Equity; (viii) the DDS General Partner Contribution; and (ix) the GP Capital Contribution.

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

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

(bbbb) "Qualifying Household" has the meaning set forth in Section 2.8(c).

(cccc) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants, of even date herewith, between the County and Borrower related to the Loan, to be recorded against the Property.

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

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

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

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

(hhhh) "Retention Amount" means Ten Thousand Dollars (\$10,000) of the HOME Loan, the disbursement of which is described in Section 2.7.

(iii) "Social Services Plan" has the meaning set forth in Section 3.10.

(jjjj) "Special Payment" has the meaning in Section 2.8(b).

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

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

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

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

(oooo) "Tenant Selection Plan" has the meaning set forth in Section 3.10.

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

(qqqq) "Transfer" has the meaning set forth in Section 4.15 below.

(rrrr) "Very Low Income Household" has the meaning set forth in the Regulatory Agreement.

## Section 1.2 Exhibits

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

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

## ARTICLE 2 LOAN PROVISIONS

### Section 2.1 Loan.

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

Section 2.2 Interest.

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

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

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

Section 2.3 Use of Loan Funds.

(a) Borrower shall use the Loan for predevelopment and development costs, consistent with the Approved Development Budget. Use of the HOME Loan for reimbursement of costs incurred prior to September 1, 2013 is subject to Section 92.206(d)(1) of the HOME Regulations.

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

Section 2.4 Security.

In consideration of the Loan, Borrower shall (i) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property, and (ii) execute the Regulatory Agreement and the Intercreditor Agreement and cause or permit them to be recorded against the Property.

Section 2.5 Subordination.

(a) Any agreement by the County to subordinate the Deed of Trust and/or Regulatory Agreement to an encumbrance securing and/or evidencing the Bank Loan will be subject to the satisfaction of each of the following conditions:

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

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

(iii) Borrower demonstrates to the County's satisfaction that subordination of the Deed of Trust and the Regulatory Agreement is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the

Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Bank Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

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

(v) The subordination(s) of the Loan is effective only during the original term of the Bank Loan and any extension of its term that is approved in writing by the County.

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

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

#### Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The disbursements made pursuant to this Section 2.6 may not exceed Two Million Six Hundred Ninety Thousand Dollars (\$2,690,000). The County is not obligated to disburse any portion of the Loan, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

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

(b) Borrower holds title to the Property or is acquiring title to the Property simultaneously with the disbursement of the Loan proceeds;

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

(d) There exists no material adverse change in the financial condition of

Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

(e) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.16 below;

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

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

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

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

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

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

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

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

(n) The County has received and approved labor and material (payment)

bonds and performance bonds as required pursuant to Section 3.4 below;

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

(p) Borrower has received a commitment from CalHFA for the MHSA Loan;

(q) The County has received a fully executed copy of the AHAP;

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

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

(t) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.6(a) continues to be satisfied; (ii) certification that the proposed uses of funds is consistent with the Approved Development Budget; (iii) the amount of funds needed; and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (1) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (2) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

#### Section 2.7 Conditions Precedent to Disbursement of Retention.

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

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

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

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

(d) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.16 below;

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

(f) The County has received from Borrower a Marketing Plan, Tenant Selection Plan, and Social Services Plan;

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

(h) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 and MBE/WBE requirements;

(i) If Borrower was required to comply with relocation requirements, the County has received from Borrower evidence of compliance with all applicable relocation requirements;

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

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

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

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

#### Section 2.8 Repayment Schedule.

(a) Annual Payments of HOME Loan. Commencing on June 30, 2016, and on June 30 of each year thereafter during the Term, Borrower shall make a HOME Loan payment in an amount equal to the sum of (1) the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts and (2) the County Net Proceeds Prorata Share multiplied by Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest; and second, to principal.

(b) Special Repayments of HOME Loan from Net Proceeds of Permanent Financing. No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County as a special repayment of the HOME Loan, an amount equal to the result obtained by multiplying the County Net Proceeds Prorata Share by the Available Net Proceeds (the "Special Payment"). No later than one hundred eighty (180) days following completion of construction of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds



of Permanent Financing and a draft of the Final Cost Certification as defined Section 4.3 below. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained.

(c) Special Repayment of HOME Loan for Failure to Lease. If on or before the Rental Shortfall Due Date, Borrower fails to cause each of the HOME-Assisted Units to be rented to and occupied by an Extremely Low Income Household or a Very Low Income Household (each such household, a "Qualifying Household") in accordance with Section 2.1 of the Regulatory Agreement, Borrower shall pay the County the Rental Shortfall Payment, plus accrued interest, on the Rental Shortfall Due Date.

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

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

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

(d) Payment in Full of Loan. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 4.15; (ii) an Event of Default; and (iii) the expiration of the Term.

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

#### Section 2.9 Reports and Accounting of Residual Receipts.

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

(a) The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2015 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(b) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts and Borrower's Shared Portion

of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

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

The receipt by the County of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County of any Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.7 below.

#### Section 2.10 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under Sections 3.8, 3.9, 4.8(b)(vi), 4.9, and 7.4 of this Agreement, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

### ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

#### Section 3.1 Permits and Approvals.

Borrower shall obtain all permits and approvals necessary for the construction of the Development no later than December 15, 2013, or such later date that the County approves in writing.

#### Section 3.2 Bid Package.

Not later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package, Borrower shall submit to the County a copy of Borrower's general contractor's

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

### Section 3.3 Construction Contract.

(a) Not later than fifteen (15) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Development. All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that Borrower enters for construction of the Development is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the construction, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract will include all applicable HOME and HOPWA requirements set forth in Section 4.8 below. The County's approval of the construction contract may not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

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

### Section 3.4 Construction Bonds.

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

### Section 3.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development to occur no later than December 15, 2013, or such later date that the County approves in writing, but in no event later than September 1, 2014. For the purposes of this Agreement, "Commencement of

Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.6 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the construction of the Development to be completed no later than May 31, 2015, or such later date that the County approves in writing.

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

Section 3.7 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Development in conformance with (i) the plans and specifications approved by the City's Building Inspection Department, and (ii) the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (i) any change in the work the cost of which exceeds Twenty-Five Thousand Dollars (\$25,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Fifty Thousand Dollars (\$50,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

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

(i) all applicable laws, codes (including building codes and codes applicable to mitigation of disasters such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter;

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

(iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the County for the procurement and maintenance thereof.

Section 3.8 Prevailing Wages.

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

(b) State Prevailing Wages. To the extent applicable, Borrower shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). Borrower shall and shall cause the contractor and subcontractors to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. Borrower shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed as required by California Labor Code Section 1777.5 et seq. Copies of the currently applicable current per diem prevailing wages are available from DIR. During the construction of the Development, Borrower shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this Subsection survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.9 Accessibility.

Borrower shall construct the Development in compliance with all applicable federal and

state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). In compliance with Section 504, a minimum of three (3) Units of all Units must be constructed to be fully accessible to households with a mobility impaired member and an additional one (1) Unit of all Units must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with Section 504 Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Development in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.10      Marketing Plan; Tenant Selection Plan; and Social Services Plan.

(a)      Marketing Plan.

(i)      No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households and HOPWA Eligible Households as required by the Regulatory Agreement (the "Marketing Plan"). The Marketing Plan must include information on affirmative marketing efforts and compliance with fair housing laws and 24 C.F.R. 92.351(a).

(ii)      Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Marketing Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County. If the Borrower does not submit a revised Marketing Plan that is approved by the County at least three (3) months prior to the date completion of the Development is projected to be complete, Borrower will be in default of this Agreement.

(iii)      If any HOME-Assisted Units have not been rented to a Qualifying Household on or before the date that is five (5) months after the Completion Date Borrower shall submit to the County a detailed report of ongoing marketing efforts, and if deemed appropriate by the County, any necessary amendments or updates to the Marketing Plan to cause the vacant HOME-Assisted Units to be rented to Qualifying Households.

(iv)      If any HOME-Assisted Units not been rented to a Qualifying Household on or before the date that is twelve (12) months after the Completion Date Borrower shall submit to the County a detailed report of ongoing marketing efforts, and if deemed

appropriate by the County, any necessary amendments or updates to the Marketing Plan to cause the vacant HOME-Assisted Units to be rented to Qualifying Households.

(b) Tenant Selection Plan.

(i) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County, for its review and approval, Borrower's written tenant selection plan (the "Tenant Selection Plan"). Borrower's Tenant Selection Plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. Part 574 and 24 C.F.R. 92.253(d), and any modifications thereto.

(ii) Upon receipt of the Tenant Selection Plan, the County will promptly review the Tenant Selection Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Tenant Selection Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Tenant Selection Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Tenant Selection Plan until the Tenant Selection Plan is approved by the County. If the Borrower does not submit a revised Tenant Selection Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this Agreement.

(c) Social Services Plan.

(i) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval its plan for providing social services from qualified service providers to the HOPWA Eligible Households of the Development as required by 24 C.F.R. Section 574.310(a)(1) and the Regulatory Agreement (the "Social Services Plan").

(ii) Upon receipt of the Social Services Plan, the County will promptly review the Social Services Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Social Services Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Social Services Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Social Services Plan until the Social Services Plan is approved by the County. If the Borrower does not submit a revised Social Services Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this Agreement.

Section 3.11 Equal Opportunity.

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

Section 3.12 Minority and Women-Owned Contractors.

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

Section 3.13 Progress Reports.

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

Section 3.14 Construction Responsibilities.

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

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

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

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

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with



the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

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

Section 3.16 Inspections.

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

Section 3.17 Approved Development Budget; Revisions to Budget.

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

Section 3.18 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). The County approves a Developer Fee of One Million Four Hundred Thousand Dollars (\$1,400,000).

Section 3.19 Partnership/Asset Fee.

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

Section 3.20 NEPA Mitigation Requirements.

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

## ARTICLE 4 LOAN REQUIREMENTS

### Section 4.1 Match Requirement.

The Borrower shall ensure that the Loan is matched with a minimum of Six Hundred Twelve Thousand Five Hundred Dollars (\$612,500) in other, non-federal sources, pursuant to and eligible under applicable HOME regulations.

### Section 4.2 Reserve Accounts.

(a) Replacement Reserve Account. Borrower shall establish and maintain an account that is available for capital expenditures for repairs and replacement necessary to maintain the Development in the condition required by the Loan Documents (the "Replacement Reserve Account"). Borrower shall make annual deposits to the Replacement Reserve Account in the amounts required in the Partnership Agreement and/or the documents evidencing the Bank Loan, whichever is greater. In no event shall the annual amount deposited in the Replacement Reserve Account exceed Five Hundred Dollars (\$500) per unit, increasing by the applicable consumer price index every five (5) years, or such greater amount required in connection with the Partnership Agreement or any permanent financing, and approved by the County.

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

### Section 4.3 Financial Accountings and Post-Completion Audits.

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

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

Section 4.4                    Approval of Annual Operating Budget.

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

Section 4.5                    Information.

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

Section 4.6                    Records.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development including all books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of this Agreement to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the Loan funds. Borrower shall cause records to be accurate and current and in a form that allows the County to comply with the record keeping requirements contained in 24 C.F.R. 92.508, 24 C.F.R. 574.450, and 24 C.F.R. 574.530. Such records are to include but are not limited to:

(i) Records providing a full description of the activities undertaken with the use of the Loan funds;

(ii) Records demonstrating that each activity undertaken with the HOPWA Funds meets one of the eligible activities of the HOPWA program set forth in 24 C.F.R. Section 574.300 and 24 C.F.R. Section 574.310;

(iii) Records demonstrating compliance with the HUD property standards and lead-based paint requirements including the property standards of 24 C.F.R. Section 574.310(b) and the lead-based paint requirements of 24 C.F.R. Section 574.635, and the maintenance requirements set forth in Section 5.6 of the Regulatory Agreement (which implements 24 C.F.R. 92.251);

(iv) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(v) Financial records as required by 24 C.F.R. 92.505, OMB Circular A-110 (24 C.F.R. Part 84), and during the HOPWA Term, financial records and other documents necessary to document compliance with the requirements of 24 C.F.R. Part 574 et seq;

(vi) Records demonstrating compliance with the HOPWA and HOME marketing, tenant selection, affordability, and income requirements;

(vii) Records demonstrating compliance with MBE/WBE requirements;

(viii) Records demonstrating compliance with 24 C.F.R. Part 135 which implements Section 3 of the Housing Development Act of 1968;

(ix) Records demonstrating compliance with applicable relocation requirements, which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

(x) Records demonstrating compliance with labor requirements including certified payrolls from Borrower's general contractor evidencing that applicable prevailing wages have been paid; and

(xi) Records documenting compliance with the Social Services Plan approved by the County.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### Section 4.7 County Audits.

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

pertaining to the Development. Borrower shall also follow audit requirements of the Single Audit Act and OMB Circulars A-122 and 110 as set forth in 24 C.F.R. 547.605 and the additional audit requirements set forth in 24 C.F.R. 574.650.

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

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

#### Section 4.8 HOME and HOPWA Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 C.F.R. Part 92, and use of the HOPWA Funds, as set forth in 24 C.F.R. Part 574 et. seq., including the requirements of the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations govern. During the HOME Reporting Term and the HOPWA Term, these requirements are federal requirements, implemented by the County; thereafter, these requirements are deemed local County requirements.

(b) The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5;

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133;

(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24;

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of

the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608;

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

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; 24 C.F.R. 574.630; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq. If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall prepare and submit a relocation plan to the County for approval. Borrower is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Borrower shall indemnify, defend (with counsel reasonably chosen by the County), and hold harmless the County against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development;

(vii) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto;

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time;

(ix) Uniform Administrative Requirements. The provisions of 24 C.F.R. 92.505 and 24 C.F.R. 574.650 regarding cost and auditing requirements;

(x) Housing Quality Standards. The housing quality standards set forth in 24 C.F.R. Section 574.310(b);

(xi) Supportive Services. The supportive service requirements of 24 C.F.R. Section 574.310(a)(1). Borrower shall procure services to satisfy such service requirements;

(xii) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (A) after the contractor is selected but before the contract is executed, and (B) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xiii) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended;

(xiv) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24;

(xv) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87;

(xvi) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not shall alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist;

(xvii) Religious Organizations. If the Borrower is a religious organization, as defined by the HOPWA and/or HOME requirements, the Borrower shall comply with all conditions prescribed by HUD for the use of HOME Funds and HOPWA Funds by religious organizations, including the First Amendment of the United States Constitution



regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257 and 24 C.F.R. 574.300(c); and

(xviii) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds.

Section 4.9 Hazardous Materials.

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

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

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

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.9, and Section 5.1(l). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this

indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

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

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

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or

acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.10      Maintenance; Damage and Destruction.

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

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

Section 4.11      Fees and Taxes.

Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency. However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

Section 4.12      Notice of Litigation.

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

Section 4.13      Operation of Development as Affordable Housing.

Borrower shall operate the Development as an affordable housing development consistent with: (i) HUD's requirements for use of HOPWA Funds and HOME Funds; (ii) the Regulatory Agreement; and (iii) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the City Loan, Housing Successor Loan, and Low Income Housing Tax Credits provided by TCAC.

Section 4.14      Nondiscrimination.

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

(b) Nothing in this Section prohibits Borrower from requiring units in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreement, and from requiring the HOPWA Units in the Development to be available to and occupied by HOPWA Eligible Households.

Section 4.15      Transfer.

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

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

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

(d) The County hereby approves a Transfer of the Property from Borrower to Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA"), or a non-profit affiliate of SAHA, and an assumption of the Loan by such transferee at the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal provision in the Partnership Agreement, and (ii) the transferee expressly assumes the obligations of the Borrower under the Loan Documents, utilizing a form of assignment and assumption agreement provided by the County.

(e) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, selected by the limited partner and approved by the County.

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

Section 4.16      Insurance Requirements.

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

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

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

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

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

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

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

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

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

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

Section 4.17 Anti-Lobbying Certification.

(a) Borrower certifies, to the best of Borrower's knowledge or belief, that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or

cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 4.18 Covenants Regarding Approved Financing and Partnership Agreement.

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

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

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County.

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

(e) The Partnership Agreement may not include any provisions that conflict with the provisions of this Agreement, including, without limitation, the Residual Receipts payment provisions of Section 2.8 above.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

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

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

(b) Authority of Borrower. Borrower has full power and authority to execute

and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

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

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

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

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

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

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved in



writing by the County.

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

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

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

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

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

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

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

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

(c) Failure to Submit Plans. If Borrower fails to submit a Marketing Plan,

Tenant Selection Plan, or Social Services Plan that is approved by the County in accordance with Section 3.10.

(d) Breach of Covenants. If Borrower fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement (other than as set forth in Section 6.1(a) through Section 6.1(c) and Section 6.1(e) through Section 6.1(m)), or in any of the other Loan Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Borrower and to the Investor Limited Partner identified in Section 7.9, or any limited partner of Borrower who has requested written notice from the County of such failure ("Permitted Limited Partner"); provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. If the Permitted Limited Partner cures an Event of Default within the cure period set forth in this subsection, the County will accept such action as curing the Event of Default as if such cure was performed by Borrower. If a Permitted Limited Partner is unable to cure an Event of Default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Event of Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Event of Default, but in no event longer than sixty (60) days after the date of receipt by the Permitted Limited Partner of written notice of the Event of Default.

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

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

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

(h) Suspension; Termination. If Borrower voluntarily suspends its business

or, the partnership is dissolved or terminated, other than a technical termination of the partnership for tax purposes.

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

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

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 4.15.

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

(m) Applicability to General Partner. The occurrence of any of the events set forth in Section 6.1 (f), through Section 6.1 (h) in relation to Borrower's managing general partner, unless the removal and replacement of the Borrower's managing general partner in accordance with Section 4.15(d), within the time frame set forth in Section 6.1(d) cures such a default.

## Section 6.2 Remedies.

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

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

(b) Specific Performance. The County has the right to mandamus or other

suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

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

Section 6.3 Right of Contest.

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

Section 6.4 Remedies Cumulative.

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

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

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

Section 7.2        No Claims.

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

Section 7.3        Amendments.

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

Section 7.4        Indemnification.

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

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

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

Section 7.6        No Third Party Beneficiaries.

Except for the Investor Limited Partner, there are no third party beneficiaries to this Agreement.

Section 7.7        Discretion Retained By County.

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

Section 7.8        Conflict of Interest.

- (a) Except for approved eligible administrative or personnel costs, no person

described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have immediate family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

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

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

(d) Borrower shall comply with the conflict of interest provisions set forth in 24 C.F.R. 92.356 and 24 C.F.R. Section 574.625.

Section 7.9      Notices, Demands and Communications.

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

County:                      County of Contra Costa  
                                    Department of Conservation and Development  
                                    30 Muir Road  
                                    Martinez, CA 94553  
                                    Attention: Affordable Housing Program Manager

Borrower:                    1550 Third, L.P.  
                                    c/o 1550 Third LLC  
                                    1521 University Avenue  
                                    Berkeley, CA 94703  
                                    Attn: Executive Director

Investor Limited  
Partner: Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attn.: Director of Tax Credit Asset Management

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

Section 7.10 Applicable Law.

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

Section 7.11 Parties Bound.

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

Section 7.12 Attorneys' Fees.

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

Section 7.13 Severability.

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

Section 7.14 Force Majeure.

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

Section 7.15      County Approval.

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

Section 7.16      Waivers.

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

Section 7.17      Title of Parts and Sections.

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

Section 7.18      Entire Understanding of the Parties.

The Loan Documents constitute the entire agreement of the parties with respect to the Loan. The Loan Documents supersede the HOME Project Agreement in its entirety.

Section 7.19      Multiple Originals; Counterpart.

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

***Remainder of Page Left Intentionally Blank***



The parties are executing this Agreement as of the date first above written.

**COUNTY:**

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

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

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

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

SHARON L. ANDERSON  
County Counsel

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

**BORROWER:**

1550 Third, L.P., a California limited partnership

By: 1550 Third LLC, a California limited  
liability company, its general partner

By: Satellite AHA Development, Inc., a  
California nonprofit public benefit  
corporation, its sole member

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

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

Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

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

Mitigation Measure(s)	Source	Method and date County staff informed Project Sponsor	Included in County loan document and /or project agreement	Verification of Mitigation Measure(s)	Responsible for implementation	Mitigation Timing	Responsible for monitoring and reporting on implementation	Monitoring and reporting frequency	Verification of compliance	Date completed	Comments
<b>Mold:</b> Remove mold in bathroom in Unit 2 of 1540 3 <sup>rd</sup> Avenue building	Phase 1 Environmental Site Assessment, January 30, 2009		<input type="checkbox"/>	<input type="checkbox"/> Mold survey results	Project Sponsor, architect, licensed mold surveyor	Pre construction	Architect and licensed mold surveyor	Once- after mold removal has been completed	<input type="checkbox"/> Letter from architect <input type="checkbox"/> Copy of Mold Survey		
<b>Asbestos and lead based paint:</b> Based on the findings of the Phase 1 Environmental Assessment conducted by Furgo West Inc. dated January 30, 2009, it is recommended that prior to renovation or demolition, sampling will be conducted to assess if asbestos containing building materials and/or lead based paint is contained in the building.  If found on site, All asbestos-containing materials found on the site must be removed prior to demolition in accordance with	Phase 1 Environmental Site Assessment, January 30, 2009		<input type="checkbox"/>	<input checked="" type="checkbox"/> Pre-Demolition Survey September 20, 2012	Asbestos and lead based paint licensed contractor	Pre and post demolition	Architect and contractor	Once- after demolition has been completed.	<input checked="" type="checkbox"/> Certification/permit post demolition		

<p>BAAQMD Regulation 11, Rule 2, including specific requirements for surveying, notification, removal, and disposal of material containing asbestos.</p> <p>If lead is found on site, then the project applicant is required to follow all applicable guidelines per the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.</p>											
<p><b>Soil Toxics:</b> Furgo recommends removing the dieldrin impacted soil from the site prior to or as a part of the site development activities. They recommend confirmation testing after soil removal.</p>	<p>Phase 2 Environmental Site Assessment, April 10, 2009</p>		<input type="checkbox"/>	<input type="checkbox"/>	<p>Project Sponsor, architect, contractor</p>	<p>Pre and post demolition</p>	<p>Architect and contractor</p>	<p>Once – after demolition</p>	<input type="checkbox"/> Letter from architect confirming correct demolition		
<p><b>EBMUD:</b> When development plans are finalized, SAHA will contact EBMUD's New Business Office and request a water service estimate to</p>	<p>City of Walnut Creek Environmental Assessment February 2009</p>		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction plans	<p>Project Sponsor, architect, contractor</p>	<p>Pre and post construction</p>	<p>Architect and contractor</p>	<p>Once – after construction has been completed</p>	<input type="checkbox"/> Copy of Final approved Building Permit		

determine costs and conditions.											
<b>Geo Tech/Soil Suitability:</b> Submit a soils report to the City of Walnut Creek's Engineering Division. All recommendations, if any, will be required.	City of Walnut Creek Environmental Assessment February 2009		<input type="checkbox"/>	<input type="checkbox"/> Geo Tech/Soils Report  <input type="checkbox"/> City of Walnut Creek Approved Construction plans	Project sponsor	Pre, during and post construction	Architect and contractor	Once – after construction has been completed.	<input type="checkbox"/> Copy of Final approved Building Permit		
<b>Relocation:</b> The relocation of occupants must comply with the Uniform Relocation Act (URA)	Project application		<input type="checkbox"/>		Relocation consultant	Pre construction	Project sponsor and relocation consultant	Once – post demolition but before construction starts	<input type="checkbox"/> Letter from Relocation Consultant confirming Relocation has been done correctly		

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND EXHIBITS.....	2
Section 1.1 Definitions.....	2
Section 1.2 Exhibits .....	11
ARTICLE 2 LOAN PROVISIONS.....	11
Section 2.1 Loan. ....	11
Section 2.2 Interest.....	12
Section 2.3 Use of Loan Funds.....	12
Section 2.4 Security.....	12
Section 2.5 Subordination.....	12
Section 2.6 Conditions Precedent to Disbursement of Loan Funds.....	13
Section 2.7 Conditions Precedent to Disbursement of Retention.....	15
Section 2.8 Repayment Schedule.....	16
Section 2.9 Reports and Accounting of Residual Receipts.....	17
Section 2.10 Non-Recourse.....	18
ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT .....	18
Section 3.1 Permits and Approvals.....	18
Section 3.2 Bid Package.....	18
Section 3.3 Construction Contract.....	19
Section 3.4 Construction Bonds.....	19
Section 3.5 Commencement of Construction.....	19
Section 3.6 Completion of Construction.....	20
Section 3.7 Changes; Construction Pursuant to Plans and Laws.....	20
Section 3.8 Prevailing Wages.....	21
Section 3.9 Accessibility.....	21
Section 3.10 Marketing Plan; Tenant Selection Plan; and Social Services Plan.....	22
Section 3.11 Equal Opportunity.....	23
Section 3.12 Minority and Women-Owned Contractors.....	24
Section 3.13 Progress Reports.....	24
Section 3.14 Construction Responsibilities.....	24
Section 3.15 Mechanics Liens, Stop Notices, and Notices of Completion.....	24
Section 3.16 Inspections.....	25
Section 3.17 Approved Development Budget; Revisions to Budget.....	25
Section 3.18 Developer Fee.....	25
Section 3.19 Partnership/Asset Fee.....	25
Section 3.20 NEPA Mitigation Requirements.....	25
ARTICLE 4 LOAN REQUIREMENTS.....	26
Section 4.1 Match Requirement.....	26
Section 4.2 Reserve Accounts.....	26
Section 4.3 Financial Accountings and Post-Completion Audits.....	26
Section 4.4 Approval of Annual Operating Budget.....	27
Section 4.5 Information.....	27
Section 4.6 Records.....	27

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 4.7 County Audits.....	28
Section 4.8 HOME and HOPWA Requirements.....	29
Section 4.9 Hazardous Materials.....	33
Section 4.10 Maintenance; Damage and Destruction.....	35
Section 4.11 Fees and Taxes.....	35
Section 4.12 Notice of Litigation.....	36
Section 4.13 Operation of Development as Affordable Housing.....	36
Section 4.14 Nondiscrimination.....	36
Section 4.15 Transfer.....	36
Section 4.16 Insurance Requirements.....	37
Section 4.17 Anti-Lobbying Certification.....	38
Section 4.18 Covenants Regarding Approved Financing and Partnership Agreement.....	39
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.....	39
Section 5.1 Representations and Warranties.....	39
ARTICLE 6 DEFAULT AND REMEDIES.....	41
Section 6.1 Events of Default.....	41
Section 6.2 Remedies.....	43
Section 6.3 Right of Contest.....	44
Section 6.4 Remedies Cumulative.....	44
ARTICLE 7 GENERAL PROVISIONS.....	44
Section 7.1 Relationship of Parties.....	44
Section 7.2 No Claims.....	45
Section 7.3 Amendments.....	45
Section 7.4 Indemnification.....	45
Section 7.5 Non-Liability of County Officials, Employees and Agents.....	45
Section 7.6 No Third Party Beneficiaries.....	45
Section 7.7 Discretion Retained By County.....	45
Section 7.8 Conflict of Interest.....	45
Section 7.9 Notices, Demands and Communications.....	46
Section 7.10 Applicable Law.....	47
Section 7.11 Parties Bound.....	47
Section 7.12 Attorneys' Fees.....	47
Section 7.13 Severability.....	47
Section 7.14 Force Majeure.....	47
Section 7.15 County Approval.....	48
Section 7.16 Waivers.....	48
Section 7.17 Title of Parts and Sections.....	48
Section 7.18 Entire Understanding of the Parties.....	48
Section 7.19 Multiple Originals; Counterpart.....	48
EXHIBIT A                      Legal Description of the Property	



TABLE OF CONTENTS  
(continued)

Page

EXHIBIT B	Approved Development Budget
EXHIBIT C	NEPA Mitigation Requirements

HOPWA AND HOME LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

1550 THIRD, L.P.

Third Avenue Apartments

dated \_\_\_\_\_, 2013