

Second Mortgage NSP-3 Loan Documents

**NORTH CAROLINA
DURHAM COUNTY**

**SOUTHSIDE REVITALIZATION PHASE 1 LP
CONSTRUCTION/PERMANENT SECOND DEED OF TRUST
LOAN AGREEMENT**

THIS CONSTRUCTION/PERMANENT SECOND DEED OF TRUST LOAN AGREEMENT is made and entered into this ____ day of _____, 2012 by and between the City of Durham, Durham, North Carolina (“City”) and Southside Revitalization Phase 1 LP, a Missouri limited partnership the mailing address of which is c/o McCormack Baron Salazar, Inc. (“MBS”), 720 Olive Street, Suite 2500, St. Louis, Missouri 63101(the “Borrower”).

WHEREAS, the Borrower has applied to the City for a loan to finance new construction by the Borrower on the Property (as hereinafter defined) for 80 floating Low Income Housing Tax Credit units of which, 32 are reserved for households with incomes at or below 50% of the Area Median Income.

WHEREAS, , the City has agreed to make available to the Borrower certain funds from the Neighborhood Stabilization Program (NSP-3) which was provided under Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). NSP funds were originally authorized under Section 2301 (b) of the Housing and Economic Recovery Act of 2008 (HERA), as amended, with said grant being made available through the North Carolina Department of Commerce, Division of Community Assistance (DCA) and being designated as grant number 11-N-2189 and known as the “grant” ; and

WHEREAS, the Borrower agrees to abide by each paragraph of this Agreement and its attachments and all procedures, rules, and regulations imposed upon the City by HUD in connection with its receiving the federal grant referenced above; and

WHEREAS, the Borrower further agrees that all activities conducted under the Contract shall be of a type authorized by the provisions of Part 8, Article 19 of Chapter 160A of the General Statutes of North Carolina, as amended by Chapter 206 of the Session of laws of 1987.

NOW, THEREFORE, to induce the City to make a loan to the Borrower and to establish the mutual agreements and obligations of the parties, and in consideration of the recitals, covenants and promises set forth herein, the Borrower and the City agree as follows:

ARTICLE I

Definitions

For purposes of this Agreement each of the following capitalized terms shall have the meaning specified with respect thereto:

- 1.1 **Agency**: means the North Carolina Housing Finance Agency.
- 1.2 **Agreement**: this Construction/Permanent Second Deed of Trust Loan Agreement as the same may from time to time be amended.
- 1.3 **Annualized Gross Income**: will be defined and calculated using United States Department of Housing and Urban Development (HUD) Section 8 regulations, as may be revised from time to time by HUD.
- 1.4 **Area Median Family Income**: the amounts established by HUD as Median Family Income for the Durham Metro region, as they may be revised from time to time by HUD. See Attachment A, which is attached hereto and incorporated by reference.
- 1.5 **Bonds**: defined as general obligation Housing bonds in an aggregate principal amount not to exceed \$20,000,000, the issue of which was authorized by the voters of the City at a referendum held on November 5, 1996.
- 1.6 **Borrower**: the "Borrower" as defined in the recitals of this Agreement and any person, partnership or corporation hereafter acquiring title to or any interest in the security for the Loan.
- 1.7 **City**: the City of Durham, Durham, North Carolina.
- 1.8 **City's Inspector**: the City's employee or designee, including but not limited to any one or more architectural, engineering or consulting firms of the City's choice, to be engaged by the City, at its option and at the Borrower's expense, to examine and approve the Property, Improvements and all materials and services used thereon, the Plans, plan changes, cost breakdowns, progress of construction and all other matters relating to the construction of the Improvements and to review and approve all Draw Requests.
- 1.9 **Code**: means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

1.10 Commitment: the City has agreed to make a loan to Borrower in a principal sum not exceeding \$950,000.00 in NSP-3 Funds.

1.11 Completion Date: the date on or before which the improvements must be completed in the manner specified in this Agreement, which date shall be the Construction Phase Maturity Date.

1.12 Construction Phase: the Construction Phase shall mean the period of time from the date of this Agreement until up to twenty-four (24) months after the construction permit is received hereafter (the "Construction Phase Maturity Date"). Under no circumstances shall the Construction Phase Maturity Date extend beyond September 30, 2014. In the event, however, that the Borrower properly exercises its option to convert the Loan to a Permanent Loan in accordance with Article V, the Construction Phase shall end on the day immediately preceding the commencement of the Permanent Phase as provided in Section 5.3.

1.13 Deed of Trust: all security instruments presently, or subsequently required by the City, including, but not limited to, the deed of trust, security agreements, financing statements and assignments of leases, construction documents and construction plans and specifications, all in form and content satisfactory to the City, securing the Loan indebtedness of Borrower to the City. The City's Deed of Trust shall constitute a second priority lien on the Property.

1.14 Draw Request: any request by the Borrower, pursuant to Section 2.2 of this Agreement, for a disbursement of any portion of the proceeds of the Loan.

1.15 Dwelling Unit: means a residence that includes cooking, sleeping and bathroom facilities and that is to be occupied on a year-round basis.

1.16 Eligible Tenant: means persons whose Annualized Gross Income (as computed at the time of application of such person or family for residence in such Unit) from whatever sources derived and before taxes and withholdings utilizing the Section 8 definition of income, does not exceed 60% of the HUD-specified Area Median Family Income.

1.17 Escrow and Disbursing Agreement: means the Escrow and Disbursing Agreement by and among the Borrower, the First Deed of Trust Lender, the City, the Agency, the Investor, the Architect, the General Contractor and Title Agent(s), of even date herewith.

1.18 First Deed of Trust: a mortgage of approximately \$2,500,000.00 construction loan and \$2,500,000.00 permanent loan with US Bank, N.A. shall be in first lien position

1.19 General Contractor: a building, construction, or contracting firm with whom Borrower has contracted or may in the future contract with for the construction of the Improvements pursuant to a certain construction contract between them (the "Construction Contract").

1.20 Guarantor: None Required.

1.21 Improvements: the improvements and fixtures located at the Property, including improvements and related amenities to be created at the Property, as indicated in Exhibit A of this Agreement.

1.22 Land: that vacant land with frontage along Lakewood Avenue and N. Roxboro Road, located in Durham County known as Lot #1, consisting of 5.568 acres and Lot #2, consisting of 0.744 acres, identified on Preliminary map for Rolling Hills Phase One as revised on March 14, 2012, and particularly described in Exhibit A to the Deed of Trust.

1.23 Limited Partnership Agreement: means that Amended and Restated Agreement of Limited Partnership of Borrower of even date herewith.

1.24 Loan: the loan made by the City to the Borrower pursuant to the Loan Documents. The Loan shall have a Construction Phase and if the requirements of Article V are met, a Permanent Phase.

1.25 Loan Documents: the collective reference to the Commitment, if any, this Agreement, the Note and the Deed of Trust and all other documents, approvals, waivers, opinions, policies, surveys and agreements required by the City as a term of agreeing to make the loan, or required by the terms of this Agreement to be submitted to the City.

1.26 Mortgage Loan Program Servicing Agreement: means the agreement between the City and a service provider to service mortgage loans by the City.

1.27 Multi-Family Dwelling Unit: means a Dwelling Unit of the type, located and otherwise as referenced in the Project Description attached as Exhibit A to this Agreement and with respect to which the City agrees to make the Loan.

1.28 Net Cash Flow Available for Subordinate Debt: means Surplus Cash (as defined by HUD) from operations remaining at the end of each year of Borrower after payment of all Operating Expenses for the Project for such fiscal year. Operating Expenses means all expenses of every kind and character which Borrower incurs in connection with the operation of the Project (excluding principal and interest due and payable under the City's Second, Third, Fourth and Fifth Deed of Trust Loans). For the purposes of calculating Operating Expenses, the

following apply: (a) exclude depreciation; (b) Reserve deposits for taxes, insurance, replacement and operating deficits shall be included; (c) Capital expenditures shall be included; (d) tax credit adjustor payments shall be included; (e) repayment of Operating deficit loans/advances made to the Borrower required under the Operating Deficit and Completion Guaranty shall be included; (f) pay the Limited Partner Asset Management Fee; and (g) casualty proceeds, to the extent that are used to pay actual costs to repair or replacements due to casualty shall be included.

1.29 Note: the promissory note, in form and content required by the City, which evidences the Loan indebtedness of Borrower to the City.

1.30 Permanent Phase: provided the requirements of Article V are met, the period of time from the commencement of the Permanent Phase as provided in Section 5.3.

1.31 Permitted Transfers: means all of the following: (a) issuance of limited partner interests in Borrower as contemplated in the Partnership Agreement; (b) the transfer by the initial Investor Limited Partner of its limited partner interests in the Borrower to any other entity which is an Affiliate of such initial Investor Limited Partner or which is controlled directly by such initial Investor Limited Partner; provided that, following any such transfer, such transferee shall be primarily obligated to make all Tax Credit Equity Funds to the Borrower in accordance with and subject to the Partnership Agreement, provided that the Borrower provides Lender with written notice of such transfer upon receipt of notice from the Investor Limited Partner; (c) the transfer by the Investor Limited Partner of its ownership interests in Borrower to any other entity after such time as the Investor Limited Partner has made all Tax Credit Equity Funds to Borrower in accordance with and subject to the Partnership Agreement; and (d) the removal of any General Partner by the Investor Limited Partner pursuant to the terms of the Partnership Agreement and the substitution of such General Partner with (i) an Affiliate of such Investor Limited Partner or (ii) such other entity as is approved by the City, subject, in the case of (ii) above, to such conditions as may be imposed by the City.

1.32 Permanent Loan: the Permanent Phase of the Loan following Construction Phase as described in Section 5.1.

1.33 Persons With Disabilities: those who have a disability that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that the disability could be improved by more stable conditions.

1.34 Plans: the plans and specifications for the construction of the Improvements and including such amendments as may, from time to time, be made by the

Borrower, so long as the amendments are in accordance with the budget and the overall project plan.

1.35 Property: the collective reference to the Land, Improvements and all personal property and fixtures described in the Deed of Trust.

1.36 State: means the State of North Carolina.

1.37 Title Assurances: (1) the Title Policy referred to in Section 1.32 insuring that the Deed of Trust is a valid second priority lien on the indefeasible fee simple estate of the Property subject only to such matters of title acceptable to the City, and (2) such certificates, lien waivers, subordination agreements, indemnity agreements, and other documents as the City may require from the Borrower and all persons furnishing professional services, labor, or materials for construction of the Improvements to assure the priority of the Deed of Trust.

1.38 Title Policy: Mortgagee's title insurance in a form and substance satisfactory to the City and from a title insurance company acceptable to the City.

1.39 Transitional Housing Unit: Not applicable.

ARTICLE II

The Loan

2.1 Loan by the City: Subject to the terms and conditions provided in this Agreement and in the Loan Documents, and all applicable laws and regulations, the City agrees to make the Loan to the Borrower and the Borrower agrees to borrow up to \$950,000.00 at zero percent (0%) interest during the Construction Phase and at two percent (2%) interest during the Permanent Phase, as specified in the Note. The Construction Phase of the Loan shall terminate no more than twenty-four (24) months after the date of execution of this Agreement or after the construction permit is received, whichever is later. Under no circumstances shall the Construction Phase extend beyond September 30, 2014. If, however, the Borrower exercises the option provided in Article V to convert the Loan to a Permanent Loan, the Construction Phase shall expire on the last day immediately preceding the commencement of the Permanent Phase. The Permanent Phase shall be as set forth in Article V. So long as there shall exist no Event of Default or any condition which with the giving of notice or passage of time would constitute an Event of Default, the City agrees to make disbursements to the Borrower against the Note (and each advance hereunder shall be conclusively deemed made against the Note) for construction and development costs approved by the City up to the full Loan amount, in accordance with and subject to the following procedures.

2.2 Draw Request: At such time as the Borrower shall desire to obtain, subject to the other requirements hereof, a disbursement of any portion of the proceeds of the Loan, the Borrower shall complete, execute and deliver to the City a properly completed draw request in a form designated by the City, together with the General Contractor's Payment Request which shall have been approved by the City's Inspector and by such other documents as the City may request ("Draw Request"), all in such form as the City may require from time to time. No failure or delay on the part of the City to require any such documents or information shall operate in any way so as to waive the City's rights to require all such documents and information at a later time Draw requests will occur no more often than monthly, only with proper certification of completion from the Architect, and with the final 5% retainage being paid only after receipt of a Certificate of Occupancy and Release of Liens. All draw disbursements shall be made in accordance with the Escrow and Disbursing Agreement.

2.3 Evidence of Progress of Construction: Without in any way limiting the documentation that the City may require, each Draw Request shall be accompanied by evidence in form and content satisfactory to the City including, but not limited to, certificates and affidavits of the Borrower, General Contractor, and such other persons as the City may require showing the following:

- (a) the percentage of the Improvements completed at that time; the total funds expended to date by the Borrower in connection with the construction of the Improvements (including the portions thereof of which Loan proceeds have been previously disbursed); and the funds required to complete the construction of the Improvements;
- (b) that all outstanding claims for labor, materials and fixtures have been paid (except for bills not yet past due and for which payment will be promptly made upon receipt by the Borrower of the then requested Loan disbursement);
- (c) that there are no liens outstanding against the Property except for the City's Second, Third, Fourth and Fifth Deeds of Trust, a First Deed of Trust, and a Sixth Deed of Trust in favor of Agency, other than inchoate liens for property taxes not yet due;
- (d) that the Borrower has complied with all of its obligations, as of the date thereof, under the Loan Documents;
- (e) that all construction prior to the date of the Draw Request has been done in accordance with the Plans;

- (f) that all funds previously disbursed by the City, if any, have been applied directly to construction costs approved by the City;
- (g) that attached to such Draw Request are (i) a complete list of invoices or statements to be paid from the requested Loan disbursement, (ii) as to individual costs paid from the last preceding Loan disbursement, copies of invoices and statements, and (iii) satisfactory receipts from all subcontractors and materialmen paid from the last preceding Loan disbursement;
- (h) that all costs associated with change orders that extend beyond the costs in the agreement or that lessens the quality of the materials shall have been approved in writing by the City;
- (i) that the Loan proceeds of all project financing then remaining to be disbursed are sufficient to cover the remaining costs of project construction.
- (j) that all construction funds will be disbursed in accordance with the Escrow and Disbursing Agreement.

2.4 Continuation of Title Insurance Coverage: Each Draw Request shall, if required by the City, be accompanied by a satisfactory endorsement to the previously issued Title Policy, which endorsement shall (i) indicate that since the effective date of said policy (or the effective date of the last such endorsement, if any) there has been no change in the status of title to the Property as set out in said policy, (ii) have the effect of increasing the coverage under the "pending disbursement" clause of the policy by an amount equal to the advance then being made, and (iii) contain such other provisions as may be required by the City.

2.5 Limits on Amounts of Disbursements: At no time and in no event shall the City be obligated to disburse funds for personal property or construction materials stored off the Land or against any construction contract or subcontract not previously furnished to and approved by (and, if requested by the City, assigned to) the City.

2.6 Amount of Disbursement: Following a request by the Borrower for a Loan disbursement, the City shall disburse only after meeting the following conditions.

- (a) Construction Work and Materials: Loan disbursements for construction work, materials and other "hard costs" shall initially be made on the basis of ninety five percent (95%) of the value of the work and material then in place on the Improvements and materials acquired and

stored on site in a manner reasonably satisfactory to the City, minus the amount of all previous Loan disbursements (including those for "hard" and "soft" costs).

(b) Non-Construction Items: Loan disbursements for non-construction items (i.e., so called "soft costs") shall be made on the basis of 100% of all such costs as shall be included in the Approved Budget. The City may require that invoices for such costs be submitted for City approval prior to making any disbursements for such items.

(c) At any time prior to or during the term of the Loan, the City may require the Borrower to submit an updated budget of construction and other costs associated with the construction and development of the proposed Improvements (the "Budget"). The Budget shall be in such detail as City may require and all aspects thereof are subject to City's approval. Disbursements for such items or category listed in such Budget shall not exceed the City's commitment of \$950,000.00. If any cost exceeds the committed amount, the Borrower shall pay such excess from additional funding sources or from its own funds.

(d) From and after the fulfillment of the conditions set forth in Section 4.2, the remaining undisbursed Loan proceeds shall be disbursed.

2.7 Notice, Frequency and Place of Disbursement: Unless otherwise determined by the City, (i) each Draw Request shall be submitted to the City at least ten (10) business days prior to the date of the requested advance, (ii) disbursements shall be made no more frequently than monthly, and (iii) all disbursements shall be mailed from the City of Durham's Finance Department.

2.8 Deposit of Funds Advanced: If required by the City, the Borrower immediately will deposit all Loan proceeds advanced by the City in a separate and exclusive demand deposit account with a financial institution acceptable to the City, and the City, at its option, may make any advance directly to such account with the Title Company in accordance with the Escrow and Disbursing Agreement (with the date of the deposit being the date of the advance for all purposes). All Loan proceeds shall be withdrawn and used solely for the purposes specified in the Draw Request, and Borrower will promptly furnish the City with evidence thereof. The City reserves the right to require that disbursements from any disbursement account for major contracts or subcontracts be made by checks with joint payees requiring endorsements by both the labor contractor and materialman.

2.9 Value of Work; Percentage Completion: The value of work and material in place as well as stored on the Property at any time shall be determined

by the Borrower's Architect certified to all Lenders as to the percentage of Completion.

2.10 Payments to General Contractor, etc.: At its option, the City may make any or all Loan disbursements requested by the Borrower directly to the General Contractor or any subcontractor, laborer or material supplier providing labor, services or materials in connection with the construction of the Improvements, and the Borrower hereby gives the City irrevocable direction and authorization to so disburse the funds, provided, City provides written detail as to amount disbursed, date, payee and invoices paid with duplicate copies sent to the Title Company. No further direction or authorization from the Borrower shall be necessary to warrant such direct disbursements, and all such disbursements shall be secured by the Deed of Trust as fully as if made to the Borrower, regardless of the disposition thereof by the General Contractor, subcontractor, laborer or material supplier so paid, and the Borrower gives the person to whom such payments are made the authority, at the City's request and on behalf of the Borrower, to sign a receipt for such funds stating that such funds are secured by the Deed of Trust.

2.11 Advances to Title Insurance Company: The City shall make any and all advances through the title insurance company insuring the lien of the Deed of Trust and any portion of the Loan so disbursed by the City shall be deemed disbursed as of the date on which the title insurance company receives such disbursement. The execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable direction and authorization to so advance the funds. No further direction or authorization from the Borrower shall be necessary to warrant such direct advances to the title insurance company, and all such advances shall be secured by the Deed of Trust as fully as if made to the Borrower, regardless of the disposition thereof by the title insurance company, and the Borrower gives any title insurance representative the authority, at the City's request and on behalf of the Borrower, to sign a receipt for such funds stating that such funds are secured by the Deed of Trust.

2.12 Advances Do Not Constitute a Waiver: No advance of Loan proceeds hereunder shall constitute a waiver of any of the conditions of the City's obligation to make further advances nor, in the event the Borrower is unable to satisfy any such condition, shall any such advance have the effect of precluding the City from thereafter declaring such inability to be an Event of Default hereunder.

2.13 City's Option to Employ Architect: The City reserves the right to engage an architect or engineer of its choice to inspect the work and materials in place, to review the work for defects and conformity with the Plans, and to approve

Draw Requests. All costs and expenses incurred by the City for such services shall be paid by the Borrower.

2.14 Other Payments: In addition to Loan payments required of the Borrower under this Agreement, in the event of default by the Borrower, the Borrower agrees to make additional payments, at any time and from time to time until this Agreement is terminated, to the City for any and all costs, expenses and liabilities paid or incurred by the City, including reasonable fees of counsel and disbursements thereof in connection with the execution and delivery of this Agreement, the Deed of Trust or any of the other Loan Documents or paid or incurred by the City in satisfaction of any obligation of the Borrower hereunder which is not performed by the Borrower in accordance with the terms hereof in the Deed of Trust or any of the other Loan Documents. The Borrower shall also reimburse the City for any and all expenses, costs and liabilities paid or incurred by the City or any of its officers, employees and agents, including reasonable fees of counsel and disbursements thereof, requested by the Borrower, or required by this Agreement, or incurred in enforcing the provisions of this Agreement, or incurred in defending any action or proceedings with respect to the Property or this Agreement, or arising out of or based upon any other document relating to this Agreement, which are not otherwise required to be paid by the Borrower hereunder; provided, however, Borrower shall not be required to reimburse the City for costs, liabilities or expenses arising out of its negligence or intentional misconduct of the City.

2.15 No Warranty by City: The City does not make any warranty, either express or implied, that the proceeds of the Loan will be sufficient to pay all or any particular portion of the cost of the Improvements.

2.16 Covenants to Run with the Land. The covenants, reservations and restrictions set forth herein shall be incorporated by reference in the Deed of Trust, which shall be recorded, and shall be deemed covenants running with the land appurtenant to the Improvements and shall pass to and be binding upon the Borrower's heirs, assigns and successors in title to such Land or Improvements; provided, however, that upon the termination of this Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying such Land or Improvements or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of such Land or Improvements are conveyed, all of such covenants, reservations and restrictions shall run to each portion of such Land or Improvements.

ARTICLE III

Conditions Precedent to First Disbursement

The City shall not be obligated to make the first Loan disbursement until all of the following conditions have been satisfied:

3.1 **Instruments Received by the City:** The City shall have received in form and substance satisfactory to the City and the City's counsel, all documents, approvals, agreements, authorizations, opinions, certifications, consents, waivers, surveys, insurance policies, licenses, photographs, schedules, foundation survey, projections and permits required by the Loan Documents and all other terms, conditions and requirements of the Loan Documents shall have been complied with by the Borrower.

3.2 **No Event of Default:** No uncured Event of Default, as hereafter defined, shall exist, and no event shall have occurred which, with the giving of notice, the passage of time or both shall constitute an Event of Default.

3.3 **Borrower's Request:** The City shall have received the Borrower's Draw Request as described in Section 2.2.

3.4 **Architect's and the City's Inspector's Approval:** Any architect engaged by the City's Inspection Department, the City's Housing Inspector, and the Project Manager shall have approved the Borrower's Draw Request.

3.5 **No Advance Without Building Permit:** The City will not make an initial advance of funds without the Borrower having first acquired the building permits necessary for the construction of the Improvements, or documentation from the City's Inspections Department that no building permit is required.

ARTICLE IV

Conditions Precedent to Disbursements Following the First Disbursement

4.1 **Conditions Precedent to Second and Subsequent Disbursements:** The City shall not be obligated to make any Loan disbursements after the first disbursement and prior to the final disbursement unless and until all of the following conditions have been satisfied at the time of and with respect to each such disbursement.

- (a) All of the conditions stated in Article III;
- (b) No lien or other interest shall have been permitted to attach to the Property except taxes for the current year, if not then payable, and other matters acceptable to the City and as shown on the Title Policy; and upon request by the City, the Borrower shall have the Title Policy insuring the City's lien on the Property brought up to date upon each disbursement by issuance of an endorsement to the policy satisfactory to the City and Borrower shall provide to City all Title Assurances which the City may require;
- (c) Construction of the Improvements has been conducted in a good and workmanlike manner, in substantial accordance with the Plans, and the Improvements have not been materially damaged or injured, in the opinion of the City, by fire or otherwise;
- (d) At the time of each disbursement: (1) the City is satisfied that the quality and progress of construction is in accordance with the Construction Contract and per Approved Plans and that no material default under the Construction Contract has occurred; and (2) the estimated remaining cost of construction of the Improvements does not exceed an amount which the City reasonably believes can be funded from the remaining Loan proceeds taking into account funds from all available sources and/or lenders other than the City.
- (e) All warranties and representations referred to in Section 6.17 are true and correct; and
- (f) If the foundation for any building constituting any of the Improvements has been completed the City shall have received an updated foundation survey satisfying the requirements of Section 7.9.

4.2 Conditions Precedent to Final Loan Disbursement: The City shall not be obligated to make a final Loan disbursement until all conditions in Article III and in Section 4.1 and all of the following conditions have been satisfied by no later than the Completion Date.

- (a) The Improvements have been fully completed in a good and workmanlike manner and in substantial accordance with the Plans, and certificates as to completion in such manner have been issued by the General Contractor, the City's Inspector and the Borrower's architect, if any, and certificates of occupancy and use have been issued with respect to all the Improvements by all appropriate governmental authorities.

(b) A final, as-built survey of the Property has been received and approved by the City. Such survey shall show all Improvements in place, the striping of parking areas, streets, and roadways, all access easements and the location and dimensions of all easements affecting the Land.

(c) The Title Policy insurer shall have agreed in writing satisfactory to the City to issue to the City a Title Policy or endorsement thereto insuring the full amount of the Loan and containing no exceptions for possible mechanic lien claims or other exceptions not approved by the City, and the Borrower shall have provided to the City all Title Assurances which the City may require.

ARTICLE V

Permanent Phase

5.1 **Permanent Phase**: Provided that all of the following conditions have then been satisfied by the Borrower to the City's reasonable satisfaction, the Borrower shall have the option, exercisable at any time after the fulfillment of the following conditions but in no event later than fifteen (15) days prior to the Construction Phase Maturity Date, to convert all amounts advanced during the Construction Phase to a Permanent Loan which Permanent Loan shall have a final maturity date not later than September 30, 2059 (the "Permanent Phase Maturity Date"):

(a) The Improvements shall have been fully completed to the City's satisfaction in accordance with the Plans and in accordance with all applicable governmental regulations and the City shall have received and approved written certifications of completion from the Borrower, the Borrower's architect, if any, and the General Contractor;

(b) The Borrower shall have furnished to the City copies of certificates of occupancy with respect to all of the Improvements and such other governmental consents or approvals for use and occupancy of the Improvements as a residential apartment complex, as may be required by local, county, state, or federal governmental agencies;

(c) The Borrower shall have furnished to the City and obtained the City's approval of a current as-built survey of the Land and Improvements which survey shall be prepared by a registered land surveyor who prepared the initial boundary survey or reasonably acceptable to the City and which survey shall show no matters which would materially and adversely affect

(1) the operation of the Improvements as a residential apartment complex or (2) the value of the Improvements or (3) the City's lien thereon;

(d) The Borrower shall have fully paid all costs and expenses of the construction and development of the Improvements and there shall be no unpaid materialmen or contractors unless such liens are bonded over (including, without limitation, the General Contractor) and the City shall have received a satisfactory endorsement to the Title Policy updating the effective date of the policy to the date of the commencement of the Permanent Phase and providing coverage against materialmen and mechanics' liens and against matters of survey; and

(e) No uncured Event of Default shall have occurred or shall be continuing under any of the Loan Documents; and

5.2 Exercise of Option to Convert the Loan to Permanent Loan: In order to exercise the option to convert the Loan to a Permanent Loan, the Borrower must provide the City with written notice of such election at least fifteen (15) days prior to the Construction Loan Maturity Date. The notice shall set forth the desired relevant commencement date of the Permanent Phase determined in accordance with Section 5.3.

5.3 Commencement of Permanent Phase: Provided all of the requirements and conditions set forth in Section 5.1 have been met and the Borrower has properly exercised the option to convert the Loan to a Permanent Loan in the manner and at a time permitted under Section 5.2, then the Permanent Phase shall commence on the Construction Loan Maturity Date.

5.4 Permanent Phase Loan Terms: If the Permanent Phase commences as provided in this Article V, there shall be due on the Loan such payments as are set forth in the Note with respect to the Permanent Phase.

5.5 Use of Property: During such time as the Borrower will own and lease or rent the Property or any part thereof, the Borrower shall require that only the 80 affordable units will be subject to the following use restrictions:

(a) None of the Improvements will at any time (i) be used for any other purpose than rental housing, (ii) be used as a hotel, motel, dormitory, fraternity or sorority house, nursing home, hospital, sanitarium, rest home or trailer court or park or (iii) be rented for a lease period of less than six months.

(b) No Eligible Tenant will use any of the Improvements as an investment property.

(c) Unless permitted by the City in writing, the Improvements will not be used by any Eligible Tenant in such Eligible Tenant's trade or business, including the following uses:

(i) as a place that is used for the purpose of meeting or dealing with patients, clients or customers in the course of trade or business or that is otherwise used for or in connection with any trade or business;

(ii) as a place where inventory is held for use in the trade or business of selling products at wholesale or retail;

(iii) as a place that is used in the trade or business of providing day care for children, for individuals who have attained the age of 65 or for individuals who are physically or mentally incapable for caring for themselves; or

(iv) for lease or rent to any other person.

(d) At all times during the term of this Agreement, no Improvements will be rented to an individual or family that is not an Eligible Tenant.

For purposes of this Section, a rental unit occupied by a person or family that at the time of application of such person or family for residence in such unit is an Eligible Tenant shall be counted as occupied by an Eligible Tenant during such person's or family's tenancy in such unit, even though such person or family ceases to be an Eligible Tenant.

5.6 Reporting Requirements:

(a) During the term of this Agreement, the Borrower shall obtain from each prospective tenant, as computed at the time of such tenant's application for residence in the Improvements, a certification dated immediately prior to the application for residence of such tenant in the Improvements as to the Annualized Gross Income of such tenant, in a form acceptable to the City.

(b) The Borrower shall maintain complete and accurate records pertaining to the Annualized Gross Income of each Eligible Tenant residing in the Improvements and shall permit, upon five (5) business days' notice to the Borrower any duly authorized representative of the City to inspect such records.

(c) The Borrower shall prepare and submit to the City as soon as all rental apartment units have been rented and on each January 1 thereafter a

Certificate of Continuing Program Compliance executed by the Borrower stating (i) that all rental apartment units are occupied by Eligible Tenants and (ii) that no default has occurred under this Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Borrower has taken or proposes to take to correct such default.

(d) The Borrower shall also file with the City, on the first day of each calendar year, copies of the income certifications specified in Section 5.6(a) obtained by the Borrower during the previous year from all tenants residing in the Improvements.

5.7 Maintenance: During such time as the Borrower will own and lease or rent the Property, the Borrower will maintain the Property, both inside and outside, in a good state of repair and preservation, except for ordinary wear or tear or obsolescence in spite of repair. The Borrower will not use or permit the use of any part of the Property for any unlawful purpose or permit any unsafe or unsanitary condition or nuisance to exist thereon.

Provided there is continued compliance with applicable laws and regulations of governmental authorities, the Borrower shall have the right to remodel the Improvements or make additions, modifications and improvements thereto, from time to time, which benefit the Improvements. The cost of which remodeling, additions, modifications and improvements shall be paid by the Borrower and which shall, when made, become a part of the Property.

5.8 Substitution or Removal of Portions of Property: The Borrower shall have the right from time to time to substitute personal property or fixtures constituting a part of the Property, provided that the personal property or fixtures to be substituted for the personal property or fixtures to be replaced shall be of comparable quality and that the Borrower shall have given to the City notice in writing of its intention to effect such substitution at least seven (7) days prior to such substitution. Removal of any portion of the Property other than personal property or fixtures replaced in accordance with the preceding sentence shall be made only with the prior written consent of the City.

ARTICLE VI

Borrower's Warranties

Borrower hereby warrants and represents to City as follows:

6.1 Validity of Loan Documents: The Loan Documents are in all respects legal, valid and binding in accordance with their terms and grant to the

City a direct, valid and enforceable first lien on and security interest in and to the Property.

6.2 Priority of Lien on Personal Property: No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement has or will be executed with respect to any materials, fixtures, machinery, equipment or other personal property of the Borrower given as security for the Loan, without the prior written consent of the City, other than in favor of, the Agency and US Bank and as set forth on the attached Financial Structure and Lenders Schedule.

6.3 Conflicting Transactions of Borrower: The consummation of the transactions hereby contemplated and the performance of the obligations of the Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, promissory note, lease, loan or credit agreement, partnership agreement or other instrument, document or agreement to which the Borrower or any Guarantor is a party or by which it is bound or affected.

6.4 Litigation: There are no actions, suits or proceedings pending or threatened, against or affecting the Borrower or the Property, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien and security interest thereof, at law or in equity, or before or by any governmental authority.

6.5 Violations of Requirements: The Borrower has no knowledge of any violations or notices of violations of any statute, law, ordinance, order, rule or regulation relating in any way to the Property, or of any other requirement described in Section 6.6.

6.6 Compliance with Requirements; Hazardous Waste: (i) The Plans and construction pursuant thereto and the use of the Property contemplated thereby comply with all applicable statutes, laws, ordinances, orders, rules, regulations, restrictive covenants and all requirements of all governmental authorities including without limitation, building ordinances, health and environmental ordinances and zoning ordinances and regulations; (ii) the Plans have been approved by all necessary governmental authorities, and all zoning, utility, building, health, operating and other required permits have been obtained or will be obtained by the Borrower prior to the commencement of construction, copies of all of which shall be delivered to the City; (iii) except as reflected in Environmental Reports provided, the Property is free of hazardous waste, contaminants, oil and radioactive and any other materials the removal of which is required or the maintenance of which is prohibited or penalized; (iv) the Borrower will not use or permit the use of any hazardous or environmentally regulated substance on the

Property other than cleaning materials, pest control, fertilizer and other products customarily used by property owners in compliance with all applicable environmental laws and regulations, and if any such substance is found on the Property, the Borrower will cause it to be removed immediately at the Borrower's expense. The Borrower shall furnish the City with such evidence of the foregoing as the City shall request, including without limitation a report and certification from an engineer acceptable to the City. Notwithstanding any of the Borrower's warranties herein to the contrary, the Borrower has taken the steps necessary to insure that it can avail itself of the defenses to hazardous waste liability, if such liability is ever found to exist, provided in 42 USC 9607(b)(3) of the Comprehensive Environmental Response, Compensation and Liability Act.

6.7 Availability of Utilities: All utility services necessary or desirable for the construction of the Improvements and the operation thereof for their intended purposes and the timely issuance of certificates of occupancy, are presently available (through public or private easements or rights-of-way which would inure to the benefit of the City in the event of the foreclosure of, or the sale under the power contained in, the Deed of Trust) at the boundaries of the Land, including, but not limited to, water supply, storm and sanitary sewer, electricity and telephone facilities. The Borrower shall furnish the City with such evidence of the foregoing as the City shall request, including without limitation certificates of the General Contractor, appropriate governmental officials and appropriate utility company officials.

6.8 Condition of Property: The Property has not been damaged or injured as result of any fire, explosion, accident, flood, spill, leak or disposal of a regulated substance as such term is defined under all applicable federal, state and local environmental statutes, rules, regulations or ordinances, or other casualty.

6.9 Brokerage Commissions: The Borrower has employed no brokers in connection with the Commitment or the Loan.

6.10 Financial Statements: Other Information: The financial statements of the Borrower heretofore delivered to the City are true and correct in all respects and fairly present the respective financial conditions of the Borrower as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. No other certification, report or other information submitted to the City by the Borrower, or on Borrower's behalf, contains any material misstatement of fact or omits to state any fact necessary to make such certification, report or other information not misleading.

6.11 Status and Authority: (i) The Borrower is a for-profit limited partnership duly organized, existing under the laws of Missouri and in good

standing under the laws of North Carolina, (ii) its articles of incorporation and any certificates of assumed or business name have been delivered to the City and are in full force and effect and have not been amended or changed, (iii) no proceeding is pending, planned or threatened for the dissolution, termination or annulment of it, (iv) all articles of incorporation and of assumed or business name required to be filed have been duly filed and it has complied with all other conditions prerequisite to its doing business in North Carolina, (v) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in transactions contemplated by the Loan Documents, and (vi) all necessary corporate actions of it have been duly taken.

6.12 Construction: The Borrower is and shall remain in full compliance with its obligations under the contract(s) for construction of the Improvements. The work to be performed under the construction contract(s) is all the work called for by the Plans, and all work on the Improvements shall substantially conform to the Plans and shall be free of material structural defects. Each construction contract entered into by the Borrower or General Contractor, or on their behalf, in connection with the Improvements shall contain a provision specifically subordinating any right to a lien against the Property by reason of materials supplied or services rendered to the liens and security interests created under and by virtue of the Deed of Trust and all other Loan Documents, and if so requested, such liens shall be subordinated by separate instrument, all in form and substance satisfactory to the City.

6.13 Access: The Land abuts publicly dedicated and maintained streets and access to the Land may be made by such streets. All curb cuts and traffic signals shown on the Plans are existing or have been fully approved by all necessary governmental authorities. The Borrower shall furnish the City with such evidence of the foregoing as the City shall request, including without limitation, certificates of a surveyor approved by the City.

6.14 No Event of Default Under Loan Documents: No Event of Default by the Borrower exists under any of the Loan Documents, and no event has occurred and is continuing which, with notice or the passage of time or both, would constitute an Event of Default under any of the Loan Documents.

6.15 Sufficient Funds: Sufficient funds are available to the Borrower, in addition to the proceeds of the Note, to pay all costs of construction of the Improvements in the manner required hereby.

6.16 Affirmation by Each Draw Request: Each Draw Request shall constitute an affirmation that the representations and warranties of this Article VI remain true and correct as of the date hereof, and, unless the City is notified to the contrary prior to the disbursement of the requested advance or any position

thereof, shall constitute an affirmation that the same remain true and correct on the date of such disbursement.

6.17 Indemnification: To the fullest extent permitted by law, and excepting claims arising out of the negligence or intentional misconduct of the City, its officers, employees and/or agents, the Borrower releases the City from, agrees that the City shall not be liable for and agrees to hold the City and its officers, employees and agents harmless against: (a) any and all claims by or on behalf of any person arising in any manner whatsoever from or out of (1) any condition of the Property, (2) the construction, reconstruction, improvement, use, occupancy, conduct or management of or in any work or anything whatsoever done in or about the Property, (3) any accident, injury or damage occurring in or about the Property, (4) any breach or default by the Borrower of or in any of its obligations hereunder, (5) any environmental contamination of the Property where such liability arises under any applicable federal, state or local statute, rule, or ordinance including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or (6) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees; and (b) any and all costs, counsel fees, expenses, liabilities, obligations, losses or damages incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding which is brought against the City or any such officer, employee or agent by reason of any such claim, the Borrower, upon notice from the affected party, shall resist or defend such action or proceeding. Subject to the foregoing, the City shall cooperate and join with the Borrower at the expense of the Borrower as may be reasonably required in connection with any action taken or defended by the Borrower. In the event of a conflict between the provisions of this section and any other section of this Agreement, this section shall be deemed to be controlling.

ARTICLE VII

Borrower's Covenants and Agreement

The Borrower covenants and agrees with the City as follows:

7.1 Payment, Noncommencement; Additional Documents: The Borrower will pay when and as due all sums and other payments owing to the City hereunder or under the Note or other Loan Documents. The Borrower will not permit the commencement of any work or the delivery of any materials until the Note and Deed of Trust have been executed, and the Deed of Trust properly placed on record. On demand of the City, the Borrower will execute or cause to be executed by the appropriate parties any additional documents, reasonably required by the City to secure the Loan, confirm the security interest and lien of the Deed of Trust and second priority thereof or to comply

with any conditions the City may have imposed as a term of the loan commitment, including such additional documents, but not limited to, a new or replacement Note and/or Deed of Trust and an agreement extending or otherwise modifying the Note and/or Deed of Trust and a certificate as to the amount of the indebtedness evidenced by the Note.

7.2 Commencement of Construction: The Borrower will begin construction of the Improvements as soon as practicable after recordation of the Deed of Trust, and, in any event, within sixty (60) days after the date of this Agreement and will continue conscientiously to complete the construction of the Improvements. Construction work constituting the Improvements will be carried out and the Improvements will be utilized and maintained in such manner as to conform with this Agreement and all applicable zoning, planning, building, land use, environmental and other laws, regulations, ordinances and requirements of all governmental authorities having jurisdiction over the Improvements, and all necessary permits, licenses, consents and permissions have been obtained as of the date of execution of this Agreement or will be obtained.

7.3 Notice of Nonpayment: The Borrower will advise the City immediately in writing if Borrower receives any notice, written or oral, from any professional, laborer, contractor or material furnisher to the effect that the professional, laborer, contractor or material furnisher has not been paid in accordance with the terms of its agreement for any professional services, labor or materials furnished to, on or in the Property.

7.4 Correction of Defects; Changes to Plans: The Borrower, at Borrower's sole cost and expense from funds other than the Loan proceeds, will correct any defects in the Improvements or any departure from the Plans not previously approved by the City or otherwise permitted hereunder, whether such defects or departures are discovered before or after the disbursement of any Loan proceeds relating thereto. The Borrower will not change, alter or amend in any material respect either the Plans or installation of the Improvements without the prior written consent of the City, and will not permit any material deviations of any contractor(s) from the Plans. Notwithstanding the foregoing, no consent is required from the City for (i) change orders in an amount equal to or less than \$10,000 per occurrence or (ii) multiple change orders that do not exceed in the aggregate One Hundred Thousand Dollars (\$100,000). Any change orders in excess of these limits will require written approval by the City, which written approval will be provided in 1 business day for individual change orders up to \$25,000 and in 2 business days for individual change orders exceeding \$25,000.

7.5 Subcontractors: The Borrower will deliver to the City, upon request, the names of persons with whom the Borrower or any general contractor has contracted or intends to contract with for the construction of the Improvements or for the furnishing of labor or materials for them.

7.6 Inspection by the City: Borrower to Furnish Plans; Receipts: The Borrower will permit the City and its authorized agents to enter upon the Property during normal working hours and as often as the City desires, for the purpose of inspecting the construction of the Improvements and all materials used or to be used in the construction thereof. When requested, the Borrower will furnish to the City detailed plans, shop drawings and specifications which relate to the Improvements. The Borrower will cooperate, and shall cause all general contractors and architects to cooperate, with the City and its authorized agents during such inspections (including making available to the City working copies of the Plans and other related materials and documents). Failure of the City or its authorized agents to undertake any authorized inspections or to discover any defects or to reject materials or workmanship during any such inspection shall not make it liable to the Borrower or to any other person or relieve any obligations of the Borrower hereunder, nor shall any prior failure constitute a waiver of the City's right subsequently to inspect and to reject any such workmanship or materials. The Borrower acknowledges that neither the City's Inspector nor any other agent of the City shall have any obligation or responsibility whatsoever to the Borrower, General Contractor or any of their agents or employees. When requested, the Borrower will furnish to the City proof that all bills for labor and materials have been paid, except those which will be paid from the current request for advance.

7.7 Payment of the City's Expenses: Whether or not the Loan is made, or all funds disbursed hereunder, the Borrower agrees to pay all expenses incurred by the Borrower in order to meet the City's requirements in connection with the Loan, including (without limitation) fees and expenses for origination; commitment fees, fees for appraisal, re-appraisal, survey, recording, and title insurance premiums; architect's and the City's attorneys' fees in connection with the making of the Loan and the enforcement of the City's rights hereunder. The City may pay any such amounts to be repaid by the Borrower immediately, and if Borrower shall not reimburse the City therefore within ten (10) days after written demand, the City may add the same to the unpaid principal of the Loan, or if the Loan was not made, any such unpaid amounts shall bear interest at the rate described in the Note.

7.8 Contract with General Contractor and Architects: Additional Contractors: Except as permitted in Section 7.4, the Borrower will not, without the prior approval of the City: (a) terminate or cancel or amend or modify in any manner any contracts or agreement with any general contractor or

architect for the providing of labor, services or materials in connection with the construction of the Improvements; (b) permit any default under the terms thereof, (c) waive any of the obligations of any general contractor or any architect thereunder; or (d) take any action or fail to take any action which would relieve any general contractor or architect from its obligations thereunder. The Borrower will immediately notify the City of any additional or substitute general contractors or any architects with whom the Borrower has dealt in connection with the construction of the Improvements, and the City has the right to require the submission of any additional Loan documentation regarding such contractors or architects and the right to approve or disapprove any such additional or substitute general contractors or such architects, which consent or approval shall not be unreasonably withheld.

7.9 Foundation Survey: Upon the completion of the construction of the foundation for any building constituting a part of the Improvements, the Borrower will promptly submit to the City for its approval two (2) copies of a foundation survey of the Property prepared by a North Carolina registered land surveyor showing no violation of any restrictions, zoning or covenants pertaining to the Property. If requested by the City, the Borrower shall cause the surveyor preparing such survey to submit to the City a certification as to the absence of any encroachments from or onto the Land and compliance by the Improvements with all relevant zoning requirements and restrictive covenants governing the size, location and height of such Improvements. The Borrower will cause such survey to be delivered to the title insurance company issuing the Title Policy and shall cause the company to issue an endorsement providing coverage as to matters of survey.

7.10 Financial Statement: The Borrower will submit or cause to be submitted to the City at such time or times so requested the then current financial statements of Borrower (and any general partner of Borrower) in such form as is acceptable to the City. The City may require the financial statements of the Borrower to be certified by a certified public accountant satisfactory to the City.

7.11 Approval of Liabilities, Expenditures and Binding Commitments: Prior to payment in full of the Loan, the Borrower will not, without prior written consent of the City, incur any liability, make any capital expenditures or enter into any binding commitments of a material nature that would materially adversely effect its financial condition.

7.12 Insurance: The Borrower will obtain such insurance or evidence of insurance as the City's Risk Manager may reasonably require, including, but not limited to, the following:

(a) Title Insurance. A mortgage loan title insurance policy in an amount, form and substance and written by a title insurance company satisfactory to the City and insuring a valid first lien upon and security interest in and to the Property by virtue of the Deed of Trust, the original of which policy shall be promptly delivered to the City. The policy shall contain no exceptions other than those approved by the City.

(b) Builder's Risk Insurance. All risk replacement cost insurance with the agreed amount endorsement, written in builder's risk form, with standard noncontributing mortgagee clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be approved by the City as required by the First Deed of Trust Lender and equity investor, the originals of which policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by insurer or insurers therein to give the City thirty (30) days' prior written notice of intention to cancel) shall be delivered promptly to the City; said insurance coverage to be kept in full force and effect at all times until the completion of construction of the Improvements.

(c) Hazard Insurance: All risk replacement cost insurance with the agreed amount endorsement and such other hazard insurance as the City may require with standard noncontributing mortgagee clauses and standard subrogation clauses. Such insurance is to be in such amounts and form and by such companies as shall be approved by the City and as required by the First Deed of Trust Lender and equity investor, the originals of which policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer or insurers therein to give the City thirty (30) days prior written notice of intention to cancel) shall be promptly delivered upon completion of construction of the Improvements and before any portion of the Property is occupied by the Borrower or any tenant of the Borrower, with such insurance to be kept in full force and effect at all times thereafter until the payment in full of the Loan.

(d) Public Liability and Worker's Compensation Insurance: A certificate from an insurance company indicating that the Borrower is covered by general liability and worker's compensation insurance shall be approved by the City and as required by the First Deed of Trust Lender and equity investor. The City of Durham must be named as additional insured on the liability policy. The certificate and the endorsement providing additional insured coverage must be originals. All insurance must be provided by companies with a Best rating of A or better and companies authorized to do business in North Carolina.

(e) Flood Insurance: Satisfactory evidence, which may consist of a letter from the appropriate agent of the National Flood Insurance Association that the Land is not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards. In the event the Land is so located, and the City approves continuing with the Loan, Borrower shall provide the City with satisfactory evidence that the maximum amount of available flood insurance is in effect.

7.13 Collection and Application of Insurance and Condemnation Proceeds: The Borrower will cooperate with the City in obtaining for the City the benefits of any insurance, condemnation or other proceeds lawfully or equitably payable in connection with the transactions contemplated hereby and to reimburse the City for any expenses incurred in connection therewith (including the payment by the Borrower of the expense of any independent appraisal on behalf of the City in case of a fire or other casualty or condemnation affecting the Property). All such proceeds shall be applied to the restoration of the Property or to the payment of the Loan as more particularly described in the Deed of Trust.

7.14 Application of Loan Proceeds: The Borrower will use the proceeds of the Loan solely for the purpose of paying for approved construction and development costs.

7.15 Sign and Advertising Regarding Construction Financing: If so requested by the City, the Borrower will use the name of the City in any advertising or communications; however, the Borrower shall not do so without the prior written consent of the City.

7.16 Notice of Occupancy: The Borrower will permit no occupancy by tenants of any portion of the Improvements unless and until appropriate certificates of occupancy have been issued for such Improvements and copies thereof have been forwarded to the City.

7.17 Books and Records: The Borrower will maintain accounting records for the Improvements, separate from any general accounting records which the Borrower may maintain in connection with the Borrower's general business activities. The Borrower acknowledges that the purpose of this provision is to facilitate determination of costs incurred with reference to the Improvements and the obligations of the Borrower in respect thereof. The Borrower agrees that the City shall, at any reasonable time, have access to and the right to examine all accounting records of the Borrower which relate directly or indirectly to the Improvements. It is expressly agreed that the

reasonable cost to the City of the services of accountants which the City may employ, after a default or an Event of Default under any of the Loan Documents, to make examinations of the Borrower's accounting records with reference to the Improvements, as the City shall determine to be necessary or appropriate in the protection of the City's interests, shall be an expense which shall be treated as an advance on account of the Loan. From and after the commencement of the Permanent Phase, the Borrower shall furnish the City with quarterly and annual operating statements for the Property sufficient to enable the City to verify the amount of income being generated by the Improvements and the expenses of the operation hereof.

7.18 Soil Tests:

(a). Compaction Tests. The Borrower will provide to the City at the Borrower's expense soil compaction tests satisfactory to the City as to the ground under each building before any concrete floor slabs are poured.

(b). Environmental Audit. The Borrower shall assess the Property and shall have concluded from the results of such assessment that there is no environmental condition on or affecting the Property that would constitute a violation of any environmental law, statute, regulation, or ordinance.

7.19 Administration of the Loan: The Borrower will comply, during the term of the Loan, with the City's requirements with regard to Draw Request procedures, reporting procedures, and other matters related to the Loan; will utilize the City's forms in connection therewith; and, without limiting the generality of the foregoing, will provide the City monthly, during the term of the Loan, with such photographs of the Property as the City shall reasonably require.

7.20 Secondary Financing and Alienation: During the Loan term there shall be (i) no sale or transfer of the ownership of the Property; and (ii) no changes in the structure of the Borrower, except for transfers and removals provided for in the Partnership Agreement, without the City's prior written consent, which consent shall not be unreasonably withheld or be subject to such conditions as the City may impose, including the payment of transfer fees or increases in the interest rate due under the Note.

7.21 Operation of Residential Apartments: During the term of the loan, at all times following the completion of the Improvements of 80 affordable units, the Borrower shall operate those Improvements as residential rental units for occupancy by Eligible Tenants. The Borrower shall not discontinue the operation of the Property as residential rental units for Eligible Tenants.

The City shall have the right to approve all managing agents employed by the Borrower to manage and operate the Property, which approval shall not be unreasonably withheld or delayed.

7.22 Borrower Not to Adversely Affect Tax-exempt Status of Interest on Bonds: (Intentionally Deleted)

7.23 Opinion to be Provided: Prior to that date four and one half years from the date of this Agreement and prior to the anniversary of such date each fifth year thereafter during the term of this Agreement, and at such other times as the City shall reasonably request, the Borrower shall cause to be delivered to the City an opinion of counsel, who may be counsel for the Borrower, addressed to the City and stating that, based upon the law in effect on the date of such opinion, no filing, registration or recording and no re-filing, re-registration or rerecording of any agreement or instrument, including the Deed of Trust, any assignment or amendment thereto, and any financing statement or amendments thereto, or any continuation statements or instruments of a similar character relating to any pledges and assignments made by the Borrower to secure its obligations under this Agreement, the Note or otherwise, is required by law during the five (5) year period commencing on the fifth anniversary of the date of this Agreement (or on each succeeding fifth anniversary thereafter as applicable), in order to fully preserve and protect the security of the City and the rights of the City under this Agreement, the Note or otherwise, or if such filing, registration, recording, re-filing, re-registration or rerecording is necessary, setting forth the requirements in respect thereto. The Borrower, with such assistance and cooperation from the City as the Borrower may reasonably request, shall take or cause to be taken all actions necessary to satisfy any such requirements. Promptly after any filing, registration, recording, re-filing, re-registration or rerecording of any such agreement or instrument, the Borrower will deliver to the City an opinion of counsel, who may be counsel for the Borrower, to the effect that such filing, registration, recording, re-filing, re-registration or rerecording has been duly accomplished and setting forth the particulars thereof.

ARTICLE VIII

Events of Default

The occurrence of any of the following events and the failure of the Borrower to cure or correct such event to the City's satisfaction within the applicable notice or grace periods, if any, shall from and after the expiration of

the relevant notice or grace period, if any, constitute an Event of Default under the terms of this Agreement:

8.1 Borrower's Failure to Pay: The Borrower's failure to pay any installment payment of principal, interest, the Servicing Fee or any other payment as the same becomes due under the Note and such failure continues for ten (10) days after written notice by City to Borrower and Limited Partner.

8.2 Default in Loan Documents: The Borrower's default under or failure to perform under the terms of any Loan Document and such default or failure to perform is not cured within thirty (30) days after written notice of default has been given to the Borrower as provided in Section 10.11; provided however, if breach cannot be cured within thirty (30) days, Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days from the date of City's written notice to Borrower; provided, further, if a different notice and cure period is specifically provided in such Loan Document with respect to a specific default such different notice and cure period shall govern with respect to the specified default.

8.3 Inaccurate Representations: The invalidity or material inaccuracy of any warranty, representation or opinion in this Agreement or in any other Loan Document, or the breach, withdrawal, cancellation, rescission, termination or alteration of any agreement, approval, opinion or waiver submitted to the City as one of the Loan Documents.

8.4 Breach of Covenant: The breach by the Borrower of any material covenant or agreement contained in this Agreement or in any other Loan Document which has a material and adverse effect on the Project and such breach continues uncured for thirty (30) days after written notice of default, provided, however, if the breach cannot be cured within thirty (30) days, Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days from the date of City's written notice to Borrower; provided, further, if a different notice and cure period is specifically provided in such Loan Document with respect to a specific default such different notice and cure period shall govern with respect to the specified default.

8.5 Deviation from Plans: Defective Workmanship: Any material deviation from the Plans in the methods or in the materials, fixtures or articles used in construction without the prior written approval of the City, or the appearance of materially defective workmanship or materials uncured for thirty (30) days after written notice of default, provided, however, if the breach cannot be cured within thirty (30) days, Borrower shall not be in breach so long

as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days from the date of City's written notice to Borrower.

8.6 Easements or Encroachments on Survey: The appearance on any survey furnished hereunder of easements or encroachments which have occurred without the written approval of the City.

8.7 Termination or Delay in Progress of Work: Cessation of the work of construction prior to completion of the Improvements in accordance with the Plans for as much as thirty (30) days and the failure to recommence work within thirty (30) days after notice from the City given after the expiration of such period; or a determination by the City that the work of construction cannot reasonably be expected to be completed prior to the Completion Date.

8.8 Claim of Lien: The filing of any claim of lien against the Property, or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold funds and the continued maintenance of said claim of lien or notice to withhold for a period of thirty (30) days after notice from the City without discharge or satisfaction thereof or provision to bond over or other security therefore satisfactory to the City in accordance with the terms hereof.

8.9 Injunction: The issuance of an order or decree in any court of competent jurisdiction restraining, enjoining or prohibiting the construction of the Improvements or restraining, enjoining or prohibiting Borrower or the City from performing this Agreement, when the order continues in effect unstayed for a period of thirty (30) days.

8.10 Insurance Policies: The Borrower neglects, fails or refuses to obtain and to keep in full force and effect any insurance policies required by the City or any governmental permit or approval with respect to the construction of the Improvements and fails to restore such insurance or such approval or permit within ten (10) days after written notice from the City.

8.11 Lawsuits: Any final non-appealable judgment shall be entered by a court of competent jurisdiction against the Borrower or any person or entity that is an equity owner (either directly or indirectly) of the Borrower which has a material and adverse effect on the Borrower and substantially impairs the ability of the Borrower to perform its obligations under and by virtue of the Loan Documents.

8.12 Misleading or Unfurnished Financial Statements; Adverse Change in Financial Condition of Borrower: Any representation or warranty

submitted to the City concerning the financial conditions or credit standing of the Borrower proves to be materially false or misleading.

8.13 Priority of Deed of Trust: Other Liens: The Deed of Trust, is held by a court of competent jurisdiction to not constitute a second priority and enforceable lien upon all of the Property or the status of the Deed of Trust as a second priority lien on the Property shall be held by a court of competent jurisdiction to be invalid and the title insurance company providing the Title Policy shall deny coverage; or the Borrower fails to keep the Property free and clear of all encumbrances, liens, mortgages, security interests and subsequent financing, except those previously approved in writing by the City and except involuntary liens which the Borrower has bonded against to the City's satisfaction and which are being contested by the Borrower in good faith.

8.14 Failure to Commence or Complete Construction: If construction has not commenced within sixty (60) days after the date hereof or the Improvements are not completed in accordance with the Plans on or before the Completion Date (subject to punchlist items that do not prevent occupancy of the Premises), borrower shall notify the City as soon as possible of its request for a contract extension should it be known that Borrower will not meet the completion deadline. The Improvements shall be deemed to have been completed when all the conditions applicable to the final disbursement of Loan proceeds under Article IV shall have been satisfied.

8.15 Invalidity or Questioning of Permit or Compliance with Other Legal Requirements: Any permit, approval or consent or any building, zoning, environmental or other legal requirement of any governmental authority relating to the Property, the Improvements or the operation thereof is revoked or invalidated, or any of such matters is held by a court or other authority having jurisdiction thereof and such permit or approval is not restored or such proceeding is not dismissed within thirty (30) days after notice from the City to the Borrower.

8.16 Bankruptcy etc.: The Borrower shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of the Borrower or any of the Property, (b) file a voluntary petition in bankruptcy or admit in writing the Borrower's inability to pay its or his debts as they become due, (c) make a general assignment for the benefit of creditors (d) file a petition or answer seeking reorganization or rearrangement with creditors who are taking advantage of any insolvency law, (e) file an answer admitting the material allegations of a petition filed against the Borrower or such similar proceeding, or (f) be the subject of order, judgment or decree entered by any court of competent jurisdiction, or by any other duly authorized authority, on application of a creditor or otherwise, adjudicating the Borrower as bankrupt or

involvement or approving a petition seeking reorganization of the Borrower or appointing a receiver, trustee or liquidator of any of the Property, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days. No additional notice shall be applicable to matters under this Section 8.16.

8.17 Dissolution, etc. of Borrower: The Borrower or any owner, either directly or indirectly, of an equity interest in the Borrower shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of the City. No notice or opportunity to cure shall be required for a default under this Section 8.17.

8.18 Transfer of Property or Interest in Borrower: If any interest in the Property is transferred or disposed of in any manner or there shall occur any change in the structure of the Borrower (or any equity owner, either directly or indirectly, of the Borrower), including without limitation, a change in partners, shareholders, or any change in the respective interests of any partner or shareholder thereof, unless such disposition or change is specifically permitted by Section 7.20 or unless the City shall give its prior written consent thereto. No notice or opportunity to cure shall be required for a default under this Section 8.18.

8.19 Permitted Transfers: Notwithstanding the foregoing, Borrower shall be entitled to effectuate any Permitted Transfer without the prior approval of City so long as Borrower provides City with notice set forth in the definition of Permitted Transfer; provided, if there occurs any removal of the General Partner or change in control of the General Partner prior to completion of the Project and in connection therewith either the Development Agreement or the Construction Contract is terminated or materially modified or amended (including, without limitation, the replacement of MBS or Borrower as a party thereto), the Limited Partners shall, within ninety (90) days after such event, find a replacement developer for the Project which developer shall be subject to City's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). For purposes hereof, "change of control" means (a) the change of ownership, directly or indirectly, beneficially or of record, of equity or other ownership interests in General Partner representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding equity or other ownership interests of General Partner, or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of General Partner persons who are not appointed by MBS, or (c) MBS shall cease for any reason to be involved in the day-to-day executive management of General Partner. Borrower shall also provide Lender with such other reasonable documentation and information regarding

such transfer and such additional information as Lender may reasonably request.

ARTICLE IX

City's Rights and Remedies

In the event of the occurrence of any Event of Default the City shall, in addition to all other remedies as may be provided by law or by any other Loan Document, be entitled to the following rights and remedies:

9.1 **Acceleration of Note: No Further Disbursements:** Upon the occurrence of an Event of Default, the entire unpaid principal balance of the Loan, including all accrued interest shall, at the option of the City and without notice to the Borrower, become immediately due and payable and the City shall be under no obligation to make any further disbursements of Loan proceeds hereunder. The Borrower shall continue to be obligated to perform all duties and obligations under the Loan Documents despite any decision by the City to cease disbursements of Loan proceeds.

9.2 **Assignment of Construction-Related Contracts:** Effective upon the occurrence of an Event of Default, the Borrower hereby assigns to the City (without limiting in any manner any other assignment thereof previously or contemporaneously made by the Borrower to the City) all of the Borrower's interest in all contracts relating to the construction of the Improvements, but this assignment shall not, in the absence of affirmative written ratification of any contract by the City, be deemed to impose upon the City any of the Borrower's obligations under any such contract. A ratification of one or more contracts shall not constitute the ratification of any other contracts. The Borrower hereby constitutes and appoints the City its true and lawful attorney-in-fact, with full power of substitution in the Property to complete the Improvements in the name of the Borrower. The Borrower hereby empowers said attorney as follows: (a) to use any funds of the Borrower, including any funds which may remain undisbursed hereunder, for the purpose of completing the Improvements in the manner called for by the Plans; (b) to make such additions, changes, and corrections in the Plans as shall be necessary or desirable to complete the Improvements; (c) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (d) to pay, settle, or compromise all existing bills and claims which may be liens against the Improvements, or as may be necessary or desirable, in the sole discretion of the City, for the completion of the Improvements or for the clearance of title; (e) to take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned

by, or under the control of the Borrower, whether or not previously incorporated into the Improvements; (f) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (g) to prosecute and defend all actions or proceedings in connection with the Property or the construction of the Improvements and to take such action and require such performance as the City shall deem necessary under any guaranty of completion; and (h) to do any and every act with respect to construction or completion of the Improvements which the Borrower might do in its own behalf, including without limitation, execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of the Borrower as may be necessary or desirable, in the sole discretion of the City. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. All sums so expended by the City shall be deemed to have been disbursed to the Borrower and secured by the Deed of Trust and any other Loan Documents and shall be deemed a necessary expenditure for the preservation of the City's security. The Borrower hereby also assigns and quitclaims to the City all sums undisbursed under the Loan, with such assignment and quitclaim to be effective only upon the occurrence of an Event of Default. The City may require the General Contractor and the Borrower's architect, if any, to execute documentation evidencing their consent to this assignment, and failure of either General Contractor or architect to give such consent shall constitute an Event of Default hereunder.

9.3 Payments by the City in the Event of Dispute: Where disputes have arisen which, in the good faith opinion of the City, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, the City may agree and enter into an agreement to disburse and may disburse Loan funds for the account of the Borrower without prejudice the Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the City, in its discretion, deems proper, including, but not limiting the generality of the foregoing, agreements to indemnify (on behalf of the Borrower and/or for the City's own account) any title insurer against possible assertion of lien claims, agreements to pay disputed amounts to contractors in the event the Borrower is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of the Borrower, and the Borrower agrees to reimburse the City for any such payments made upon demand therefore, with interest at the default rate set forth in the Note from the date of payment until date of reimbursement. Such disbursements are secured by the Deed of Trust and by all other Loan Documents which are applicable.

9.4 Appointment of Receiver: The City shall be at liberty immediately upon any Event of Default to apply for and shall be entitled as a matter of right, without regard to the value of the Property or to the solvency or insolvency of the Borrower, to the appointment of a receiver to collect the rents and profits of the Property and/or to manage and operate all or part of the Improvements and with the power to sell the Property under order of Court and to apply the net proceeds of the sale toward the payment of the debt secured by this Deed of Trust.

9.5 Remedies Cumulative: All remedies of the City provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided or available at law or in equity. The exercise of any right or remedy by the City hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Note, the Deed of Trust or any applicable Loan Document, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights hereunder or under the Note, the Deed of Trust or any applicable Loan Document. No delay or omission to exercise any right or power accruing upon any default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

9.6 Assignment by the City: The title, interest, right and power granted herein by the Borrower to the City shall inure to the benefit of anyone to whom the City shall assign the indebtedness herein secured, as well as to the successors and legal representatives of the City.

9.7 Liability of the City: Whether or not the City elects to employ any or all remedies available to it on occurrence of an Event of Default, the City shall not be liable for the construction of or failure to construct or complete or protect the Improvements or for payment of any expense incurred in connection with the exercise of any remedy available to the City or for the construction or completion of the Improvements or for the performance or non-performance of any other obligation of the Borrower.

9.8 Security Interest in Reserves etc.: It is understood and agreed that the City shall have and enjoy, and is hereby granted a lien on and a security interest in, (a) all unpaid contributions, equity payments and other funds due the Borrower, or other equity owners of the Borrower and (b) any and all reserves, deferred payments, insurance refunds, impound accounts, refunds for overpayment of any kind, and any surplus or withheld funds or funds or payments owing from any party to the Borrower arising out of or occurring in connection with the construction of the Improvements, and such lien and security interest shall constitute additional security for the

indebtedness of the Borrower evidenced by the Note, and upon the occurrence of any default hereunder the City shall have and possess any and all remedies of a secured party provided by law with respect to enforcement of and recovery on its security interest on such items and amounts.

9.9 Access to Books: The City may have access to and inspect, examine and make copies of the books and records and any and all accounts, data and tax returns of the Borrower.

9.10 Non-Recourse: Except as provided below, Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under this Agreement and the other Loan Documents. The sole recourse of the City with respect to the principal of, or interest in, the Note and defaults by the Borrower in the performance of its covenants under this Agreement and the other Loan Documents shall be to the Mortgaged Premises (as defined in the Mortgage); provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all rights and remedies of Lender thereunder, or (b) be deemed in any way to impair the right of Lender to assert the unpaid principal amount of the Note as demand for money. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest in, the Note and the performance of the Borrower's obligations under this Agreement and the other Loan Documents. Notwithstanding the foregoing, nothing contained in this Agreement is intended to relieve Borrower of its obligation and the Borrower and the General Partner shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Lender as a result of: (a) any fraud or false representation by the Borrower, the General Partner or any Guarantor with regard to any matter relating to the Loan (as defined in the Loan Agreement) and the security therefor; (b) misappropriation or intentional misapplication of insurance or condemnation proceeds; (c) collection of rents for more than one month in advance or failure to apply rents to current maintenance, repairs and taxes while a Default exists under the Loan or any of the Loan Documents; (d) Borrower's failure to deliver security deposits of tenants to City following a Default, to the extent permitted by law; (e) permitting or suffering to occur any intentional waste of all or any portion of the Mortgaged Premises which results in loss or damage to the security of the Mortgaged Premises; and (f) the Borrower's failure to comply with completely with any representation, covenant, warranty or provision contained in the Loan Documents regarding environmental laws or hazardous, toxic or other environmentally regulated materials, wastes or substances, and the presence of hazardous, toxic, or other environmentally regulated materials wastes or substances on the Property, including but not

limited to, the obligations, requirements and provisions set forth in the Deed of Trust, which results in loss or damage to the Mortgaged Premises.

ARTICLE X

General Conditions

The following terms and covenants shall be applicable throughout the term of this Agreement:

10.1 **No Waiver**: No waiver of any Event of Default or breach by the Borrower hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein must be in writing and shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City to or of any act by the Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the City hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy. The City may, at any time, extend the payment of the Loan and any extensions so granted shall be deemed made in pursuant of this Agreement and are not to be modifications thereof and shall not in any way adversely affect the priority of any of the Loan Documents.

10.2 **No Third Party Beneficiaries**: This Agreement is made and entered into for the sole protection and benefit of the City the Borrower and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Loan funds at any time, nor shall the City owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, or to apply any undisbursed portion of the Loan to the payment of any such claim, or to exercise any right or power of the City hereunder or arising from any default by the Borrower.

10.3 **Joint and Several Liability**: All persons, firms and/or entities identified by the designation "Borrower" herein shall be jointly and severally liable to the City for the faithful performance of the terms hereof.

10.4 **Heirs, Successors, Assigns, Assignment**: The terms hereof shall be binding upon and insure to the benefit of the heirs, successors, assigns

and personal representatives of the parties hereto; provided, however, that the Borrower shall not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any moneys to be advanced hereunder in whole or in part without the prior written consent of the City and that any such assignment (whether voluntary or by operation of law) without said consent shall be void. It is expressly recognized and agreed that the City may assign this Agreement, the Note, the Deed of Trust and any other Loan Documents to any other person, firm, or legal entity provided that all of the provisions hereof shall continue in force and effect. In the event of such assignment, the City shall thereafter be relieved of all liability hereunder and any Loan disbursements made by any assignee shall be deemed made in pursuance and not in modification hereof and shall be evidenced by the Note and secured by the Deed of Trust and any other Loan Documents.

10.5 Definitions: Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine. References to a "Section" or "Article" shall mean a section or article of this Agreement unless otherwise expressly stated.

10.6 Business or Commercial Purposes: The Borrower warrants that the extension of credit evidenced by the Note secured hereby is solely for business or commercial purposes, other than agricultural purposes.

10.7 Governing Law: This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and any litigation relating to this Agreement shall be brought in a court in the State, with venue in Durham County.

10.8 Severability: Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

10.9 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

10.10 Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

10.11 Notices: When any notice or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States Mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To Borrower:
Southside Revitalization Phase 1 LP
c/o McCormack Baron Salazar, Inc.
720 Olive Street, Suite 2500
St. Louis, Missouri 63101
314-621-3400 ph.
314-421-3289 fax

To City:
Director,
Dept. of Community Development
101 City Hall Plaza
Durham, NC 27701
919-560-4570 ph.
919-560-4090 fax

or to such other persons or addresses as the parties may, from time to time, establish in writing.

10.12 Survivability: The Borrower's obligations, warranties and representation under Article VI and VII shall survive a default or breach by the Borrower hereunder whether or not such default or breach leads to the termination of this Agreement.

10.13 No Discrimination. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors and Borrowers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts and loans.

10.14 Exercise of Functions. Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way estop, limit or impair the City from exercising or performing any regulatory, policing, legislative governmental or other powers and functions with respect to the Property pursuant to applicable law.

10.15 No Partnership. Nothing in this Agreement is intended or shall be considered to create a joint venture or partnership between the City and the Borrower or constitute either the agent of the other or to make the City in any way responsible for the duties, responsibilities, obligations, liabilities, debts or losses of the Borrower.

10.16 Limited Capacity of City under this Agreement. The Borrower understands and acknowledges that with respect to the City's Mortgage Loan

Programs, under which the Loan is being offered by the City to the Borrower, the City is acting in a limited capacity only as a mortgage lender and is not otherwise responsible in any way with respect for the construction, operation or maintenance of the Property. The Borrower further understands and acknowledges that the Borrower is responsible for contracting with any other person with respect to the construction, operation or maintenance of the Property, that the Borrower is responsible for determining that the Improvements have been constructed or will be constructed, and thereafter operated and maintained, in accordance with all applicable requirements of law and that the Borrower is responsible for its obligations to any other person with respect to the construction of the Improvements.

10.17 Whole Agreement. This Agreement, including the Loan Documents and all exhibits attached hereto, shall be the whole agreement between the City and the Borrower with respect to the matters herein.

N TESTIMONY WHEREOF, the parties hereto have caused this Agreement be duly executed by their authorized agents.

City of Durham

By: _____
Thomas J. Bonfield, City Manager

ATTEST: Durham

City Clerk

Southside Revitalization Phase 1 LP

By: _____

By: _____

Name: _____

ATTEST:

Corporate Secretary

**NORTH CAROLINA
COUNTY OF DURHAM**

I, a Notary Public in and for the aforesaid county and state certify that _____ personally appeared before me this day, and acknowledged that she is the City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk. This the _____ day of _____, 2012.

My Commission expires:

Notary Public

**STATE OF MISSOURI
CITY OF ST. LOUIS**

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is Assistant Secretary of Southside Revitalization Phase 1, LP, a limited partnership, and that by authority duly given and as the act of the limited partnership, the foregoing agreement with the City of Durham was signed in its name by its managing partner, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Asst. Secretary. This the _____ day of _____, 2012.

My Commission Expires:

Notary Public

PRE-AUDIT STATEMENT

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

City of Durham Finance Officer

Date

EXHIBIT A

PROJECT DESCRIPTION

- DEVELOPER:** Southside Revitalization Phase 1 LP
c/o McCormack Baron Salazar, Inc., 720 Olive Street,
Suite 2500, St. Louis, Missouri 63101
- LOCATION:** The project is located on approximately 6.3 acres of the entire 20 acre site at the southeast corner of Lakewood Avenue and N. Roxboro Road known as Lot #1, consisting of 5.568 acres and Lot #2, consisting of 0.744 acres, identified on Preliminary map for Rolling Hills Phase One as revised on March 14, 2012. This mixed-income rental development is Phase 1 of a multi-phased redevelopment effort that will include high quality rental and homeownership units.
- PROJECT DESCRIPTION:** New construction of 12 buildings containing 80 affordable rental units as follows: 42 one bedroom units, 34 two bedroom units and 4 three bedroom units ranging from 687 square feet to 1287 square feet. 32 of the units must be reserved for households earning 50% of the Area Median Income. In addition there will be 39 market rate units consisting of 22 one bedroom units and 17 two bedroom units ranging from 687 square feet to 947 square feet. The project will also include 13 commercial live/work retail units. The Developer shall also provide common areas to include a computer room, exercise room, community supportive services office, community room, picnic areas and an outdoor swimming pool.
- TYPE OF HOUSING:** Permanent rental housing with supportive tenant services and market rate rental units.
- DEVELOPMENT TYPE:** New construction
- TENANT SERVICES:** A Resource Coordinator will be part of the property management staff and will develop and implement supportive services to the residents. Such services will

consist of coordinating the delivery of services from local human service providers, provide ongoing outreach to identify individuals who would benefit from services, recruit volunteers, and identify program and service gaps.

ELIGIBLE TENANTS: Of the 80 affordable units, 32 must be made available to households with incomes at or below 50% of the Area Median Income with the remaining 48 restricted to households with incomes at or below 60% of the Area Median income.

AFFORDABILITY PERIOD:

Units shall remain affordable for the entire duration of the City loan, but in no event shall the affordability period be less than twenty (20) years as defined by 24 CFR Part 92.252, from the time the project receives a certificate of occupancy.

INCOME VERIFICATION: The property management agent, McCormack Baron Ragan Management Services, Inc., will verify tenant's income using the Section 8 regulations for income qualification prior to move-in. McCormack Baron Ragan Management Services, Inc. must re-certify incomes on an annual schedule each year. City staff will monitor McCormack Baron Ragan Management Services, Inc. income verification files at least once per year.

MONTHLY RENTS: **Maximum Rents** – The Maximum Rent for the affordable units cannot exceed the amounts approved by the Agency.

INCOME INCREASE LIMITATIONS:

An Eligible Tenant's income cannot exceed 30%, 50% or 60% based on their income at the time of occupancy of HUD determined Area Median Family Income for a single person household at the time of initial occupancy. However, the Eligible Tenant may remain eligible even in the event that subsequent yearly income re-certifications of the Eligible Tenant's income rises above 30%, 50% or 60% of Area Median Income for the given year. As long as the tenant is income eligible at the time of initial occupancy, they may stay

year to year even if they are over income, up to 140% of maximum income level. In the event their income surpasses 140% the landlord may not renew the lease at the end of the then current lease term.

UTILITY PAYMENTS: The following utility payments will be included in the monthly rents: Water, sewer and trash collection.

<p>CITY OF DURHAM 2012 MEDIAN FAMILY INCOME CHART Effective March, 2012</p>
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FAMILY SIZE	1	2	3	4	5	6	7	8
25%	12,042	13,750	15,458	17,167	18,542	19,917	21,292	22,667
30%	14,450	16,500	18,550	20,600	22,250	23,900	25,550	27,200
40%	19,267	22,000	24,733	27,467	29,667	31,867	34,067	36,267
50%	24,050	27,500	30,950	34,350	37,100	39,850	42,600	45,350
60%	28,860	33,000	37,140	41,220	44,520	47,820	51,120	54,420
80%	38,500	44,000	49,500	54,950	59,350	63,750	68,150	72,550
100%	48,100	55,000	61,900	68,700	74,200	79,700	85,200	90,700

The total cost of the 132 unit multi-family development is estimated at \$20,760,000 and will be funded as follows:

Source	Permanent	Per Unit
1st Mortgage: US Bank	\$2,500,000	\$18,939
2nd, 3rd & 4th Mortgage: City of Durham	\$4,450,000	\$33,712
5th Mortgage: City of Durham	\$800,000	\$6,061
6th Mortgage: NCHFA	\$1,509,479	\$11,435
Tax Credit Equity: US Bank	\$11,500,000	\$87,121
TOTAL	\$20,759,479	\$157,269