

CONSTRUCTION AND TERM LOAN AGREEMENT

Borrower:	CORDOVA TROLLEY, LP c/o South Bay Community Services 430 F Street Chula Vista, California 91910	Issuer:	CHULA VISTA HOUSING AUTHORITY c/o U.S. Bank National Association 633 W. 5 th Street 24 th Floor Los Angeles, California 90071 Attention: Global Corporate Trust
		Majority Owner:	BANNER BANK 5901 Priestly Drive Suite 160 Carlsbad, California 92008-8827 Loan No. 14013992

THIS CONSTRUCTION AND TERM LOAN AGREEMENT (this “**Agreement**”), dated as of _____, 2018, is entered into by and between CORDOVA TROLLEY, LP, a California limited partnership (“**Borrower**”), CHULA VISTA HOUSING AUTHORITY (the “**Issuer**”), and BANNER BANK, a Washington corporation, and its successors and assigns, in its capacity as the “Majority Owner” and “Servicer” under the Indenture described below (in such capacities, “**Majority Owner**”) on the terms and conditions set forth below. Borrower has applied to Issuer for a loan in the total principal amount of ///[Six Million Five Hundred Thousand and No/100th Dollars (\$6,500,000)]/// in order to construct the Improvements on the Real Property described below. The interests of the Issuer in this Agreement and the Note, excluding the Reserved Rights (as defined in the Indenture), have been assigned to U.S. Bank National Association, as Bond Trustee (“**Bond Trustee**”), pursuant to a Trust Indenture dated as of _____, 2018, between the Issuer and Bond Trustee. Issuer and Majority Owner are each executing this Agreement, and Issuer is willing to lend the loan amount to Borrower and Majority Owner is willing to purchase the Bond described below, in each case, solely under the terms and conditions specified in this Agreement and in the Loan Documents, to each of which Borrower agrees. Borrower understands and agrees that: (a) in granting, renewing, or extending the Loan, Issuer and Majority Owner are each relying upon Borrower’s representations, warranties, and agreements as set forth in this Agreement, and (b) the Loan shall be and remain subject to the following terms and conditions of this Agreement.

WITNESSETH:

WHEREAS, the Issuer is a municipal corporation and charter city under the laws of the State of California (the “**State**”); and

WHEREAS, pursuant to Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code (the “**Act**”), the Issuer is authorized and empowered to issue revenue bonds and apply the

proceeds to make loans for the acquisition, construction and development of qualifying housing developments (defined in the Act to include buildings used to provide residential housing for four or more families); and

WHEREAS, Borrower has requested the Issuer to issue its Multifamily Housing Revenue Bonds (Cordova and Trolley Apartments) Series 2018A, in the original principal amount of ///[\$6,500,000]/// (the “**Bonds**”) for the purpose of making a loan (the “**Loan**”) to finance, in part, the acquisition and construction of a multifamily rental housing project to be known as “Cordova and Trolley Apartments”, located in Chula Vista, California, which, collectively, is more particularly described on Exhibit A (the “**Property**”) (the “**Improvements**” or the “**Project**”). The Bonds shall be issued pursuant to a Trust Indenture of even date herewith by and among the Issuer and Bond Trustee (the “**Bond Trustee**”) (as amended and supplemented from time to time, the “**Indenture**”); and

WHEREAS, the Issuer deems it desirable and in keeping with its governmental purpose to issue the Bonds and lend the proceeds thereof to Borrower for the purposes described above under the terms and conditions contained in this Agreement; and

WHEREAS, to evidence the Loan, Borrower is executing, in favor of the Issuer, that certain Promissory Note payable to the order of Issuer in the aggregate original principal amount of ///[\$6,500,000]/// (as amended or supplemented from time to time, the “**Note**”) which Note provides for the repayment of the Loan in amounts sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds, and which Note will be endorsed over to Bond Trustee, and Borrower has executed or caused to be executed and delivered to Issuer the Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended or supplemented from time to time, the “**Deed of Trust**”) with respect to the Project to secure, among other things, the payments due under the Note and this Agreement, which Deed of Trust shall be assigned by the Issuer to the Bond Trustee pursuant to that certain Assignment of Deed of Trust and Loan Documents executed as of even date herewith (as amended or supplemented from time to time, the “**Assignment of Deed of Trust**”); and

WHEREAS, in order to secure additional financing for the Project, Borrower has obtained a loan from the City of Chula Vista (“**City**”), in the amount of \$_____ (the “**City Loan**”). The City Loan is evidenced by that certain Consolidated, Amended and Restated Promissory Note (Cordova and Trolley – HOME Loan) dated as of _____ (“**City Note**”), made by Borrower to the order of City.

WHEREAS, in order to secure additional financing for the Project, Borrower has also obtained a loan from the City of Chula Vista Housing Authority as Successor Housing Entity (the “**Housing Authority**”), in the amount of \$_____ (the “**Housing Authority Loan**”). The Housing Authority Loan is evidenced by that certain Amended and Restated Promissory Note (Cordova and Trolley – Housing Authority Loan) dated as of _____, 2018 (the “**Housing Authority Note**”), made by Borrower to the order of Housing Authority. The City Note and the Housing Authority Note are secured by that certain Deed of Trust dated as of _____ (the “**City/Housing Authority Deed of Trust**”), made by Borrower for

the benefit of City and Housing Authority, recorded in the Official Records concurrently with the Deed of Trust; and

WHEREAS, in connection with the City Loan and the Housing Authority Loan, Borrower executed that certain Declaration of Covenants, Conditions and Restrictions dated _____ (the “**City/Housing Authority Regulatory Agreement**”), recording in the Official Records substantially concurrently with the Deed of Trust; and

WHEREAS, in order to secure additional financing for the Project, Borrower has also obtained a loan from _____ (“**Seller**”), in the amount of \$ _____ (the “**Seller Loan**”). The Seller Loan is evidenced by a promissory note executed by Borrower in favor of Seller (the “**Seller Note**”), in the face principal amount of \$ _____, and is secured by a deed of trust executed by Borrower for the benefit of Seller (the “**Seller Deed of Trust**”), to be recorded in the Official Records concurrently with the Deed of Trust; and

WHEREAS, additional funds shall be applied to the Project in the aggregate amount of _____ (the “**Capital Contributions**”) from _____ [Red Stone Entity], in its capacity as investor limited partner in Borrower (together with its permitted successors and assigns, “**Investor Limited Partner**”); and

AND WHEREAS, the execution and delivery of this Agreement and the issuance of the Bonds has been duly and validly authorized by the Issuer; and

NOW, THEREFORE, the Issuer, Borrower and Majority Owner, each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

1. TERM. This Agreement shall be effective as of _____, 2018 (the “**Closing Date**”), and shall continue thereafter until all Indebtedness has been paid in full and all other obligations of Borrower hereunder have been performed in full.

2. DEFINITIONS. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the UCC. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Advance. The word “Advance” means all advances on the Loan (defined below).

Affiliate. The word “Affiliate” means, with respect to any Person, (a) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, (i) such Person or (ii) any general partner of such Person; (b) any other Person 5% or more of the equity interest of which is held beneficially or of record by (i) such Person or (ii) any general partner of such Person, and (c) any general or limited partner of (i) such Person or (ii) any general partner of such Person. As used in the previous sentence, “control” means the possession, directly or indirectly, of the power to cause the

direction of the management of a Person, whether through voting securities by contract, family relationship or otherwise.

Agreement. The word “Agreement” means this Construction and Term Loan Agreement, as this Construction and Term Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Construction and Term Loan Agreement from time to time.

Architect. The word “Architect” means Basis Architecture & Consulting Inc.

Architecture Contract. The words “Architecture Contract” means that certain AIA Standard Form of Agreement Between Owner and Architect for a Multi-Family Residential or Mixed Use Residential Project dated as of July 10, 2018, by and between Borrower and Architect.

Bond Documents. The words “Bond Documents” mean, collectively, the Indenture, the Regulatory Agreement, the Deed of Trust Assignment, the UCC-1 and UCC-2 Financing Statements and any other document (other than the Loan Documents) now or hereafter executed by Borrower, Issuer, Bond Trustee and/or Majority Owner in connection with the Bonds.

Bond Trustee. The words “Bond Trustee” mean _____, and its successors and assigns under the Indenture.

Bond Trustee Annual Fee. The words “Bond Trustee Annual Fee” mean the annual fee due and payable to Bond Trustee by Borrower equal to ___% of the outstanding principal amount of the Bonds, but not less than a minimum annual fee to Bond Trustee of \$_____, which fee shall be payable in equal semi-annual installments in arrears on each _____ 1 and _____ 1, commencing _____, prorated for the initial and final payments.

Bonds. The word “Bonds” has the meaning set forth in the third WHEREAS paragraph above.

Borrower. The word “Borrower” means Cordova Trolley, LP, a California limited partnership.

Budget. The word “Budget” shall mean that Project budget approved by Majority Owner and attached hereto as Exhibit B.

Business Day. The words “Business Day” mean a day other than a Saturday, a Sunday or a day on which lenders in the city in which the principal office of Majority Owner is located are authorized or obligated by law or executive order to close.

City. The word “City” has the meaning set forth in the sixth WHEREAS paragraph above.

City/Housing Authority Deed of Trust. The words “City Deed of Trust” shall have the meaning given such term in the sixth WHEREAS paragraph to this Agreement.

City/Housing Authority Loan Documents. The words “City Loan Documents” shall mean, collectively, the City Note, the Housing Authority Note, the City/Housing Authority Deed of Trust, the City/Housing Authority Regulatory Agreement, and any other document evidencing, securing, guaranteeing or otherwise relating to the City Loan and the Housing Authority Loan.

City/Housing Authority Regulatory Agreement. The words “City/Housing Authority Regulatory Agreement” shall have the meaning given such term in the eighth WHEREAS paragraph to this Agreement.

City/Housing Authority Subordination Agreement. The words “City/Housing Authority Subordination Agreement” mean that certain Subordination Agreement between Bond Trustee, City, Housing Authority, Majority Owner and Borrower, subordinating the City/Housing Authority Deed of Trust and City/Housing Authority Regulatory Agreement to the lien and charge of the Security Instrument.

City Loan. The words “City Loan” shall have the meaning given such term in the sixth WHEREAS paragraph to this Agreement.

Code. The word “Code” means the Internal Revenue Code of 1986, as amended.

Collateral. The word “Collateral” means and includes without limitation all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor’s lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Completion Date. The words “Completion Date” have the meaning set forth for such term in Section 14(g) of this Agreement.

Conditions to Conversion. The words “Conditions to Conversion” has the meaning set forth in the Note.

Construction Contract. The words “Construction Contract” mean and include any contract between Borrower and the General Contractor for the Project, and any subcontracts with subcontractors, materialmen, laborers, or any other person or entity for performance of work on the Project or the delivery of materials to the Project.

Construction Disbursement Account. The words “Construction Disbursement Account” mean the account held by the Majority Owner into which the proceeds of the Loan or any Borrower’s Funds will be deposited from time to time for the funding of a request for Advance, provided that Advances of the Loan or the Borrower’s Funds will only be deposited

into the Construction Disbursement Account once all of the applicable conditions to the Advance of that portion of the Loan or the Borrower's Funds to be deposited have been satisfied.

Conversion Date. The words "Conversion Date" shall have the meaning set forth in the Note.

Deed of Trust. The words "Deed of Trust" mean that certain Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith, executed by Borrower (as grantor) in favor of Issuer (as beneficiary), to be recorded in the Official Records.

Deed of Trust Assignment. The words "Deed of Trust Assignment" mean that certain Assignment of Deed of Trust and Loan Documents dated as of even date herewith, by Issuer, in favor of Bond Trustee.

Environmental Report. The words "Environmental Report" mean, collectively, the following: Phase I Environmental Site Assignment dated _____, prepared by _____ for _____ Project No. _____.

Equity Capital Contributions. The words "Equity Capital Contributions" mean the capital contributions shown on the schedule attached to the Agreement as Exhibit D.

Equity Commitment. The words "Equity Commitment" mean the commitment of Investor Limited Partner under the Partnership Agreement to make \$_____ of capital contributions to the Partnership.

Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below in Section 20.

Fiscal Year-End. The words "Fiscal Year-End" mean December 31 each year, unless and until Borrower changes its fiscal year, provided that any such change shall require Majority Owner's prior written consent.

General Contractor. The words "General Contractor" mean _____.

General Partner. The words "General Partner" mean Cordova Trolley Management, LLC, a California limited liability company, and any other person or entity that the partners of Borrower, with the express prior written consent of Majority Owner, select to be a general partner of Borrower.

Governmental Agency. The words "Governmental Agency" mean any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility.

Grantor. The word “Grantor” means Borrower and any other person or entity granting a Security Interest in any Collateral for the Indebtedness.

Guarantor. The word “Guarantor” means, collectively, South Bay Community Services, a California nonprofit public benefit corporation, and any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Loan.

Housing Authority Loan. The words “Housing Authority Loan” shall have the meaning given such term in the seventh WHEREAS paragraph.

Improvements. The word “Improvements” means and includes without limitation all existing and future buildings, structures, facilities, fixtures, additions, and similar construction on the Property.

Indebtedness. The word “Indebtedness” means all principal and interest payable under the Note and any amounts expended or advanced by Majority Owner to discharge obligations of Borrower or Grantor or expenses incurred by Majority Owner to enforce obligations of Borrower or Grantor under this Agreement or any of the Loan Documents, together with interest on such amounts as provided in the Note.

Indemnity Agreement. The words “Indemnity Agreement” means that certain Hazardous Waste Warranty and Indemnification Agreement dated as of even date herewith, from Borrower and Guarantor to Issuer, Bond Trustee and Majority Owner.

Interim Construction Loan Maturity Date. The words “Interim Construction Loan Maturity Date” shall have the meaning set forth in the Note.

Investor Limited Partner. The words “Investor Limited Partner” shall have the meaning set forth in the ninth WHEREAS paragraph in the recitals above.

Issuer. The word Issuer means the Chula Vista Housing Authority.

Limited Partners. The words “Limited Partners” mean, collectively, the Investor Limited Partner, Special Limited Partner, and any other Person that now or hereafter owns a limited partnership interest in Borrower.

Loan. The word “Loan” means the loan to Borrower by Issuer not to exceed ///[Six Million Five Hundred Thousand and No/100th Dollars (\$6,500,000)]/// made under this Agreement and the Loan Documents as described below.

Loan Documents. The word “Loan Documents” means, collectively, this Agreement, the Note, the Deed of Trust, the Deed of Trust Assignment, all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust and all other agreements, documents and instruments whether now or hereafter existing executed by Borrower, General Partner or Guarantor in connection with the Indebtedness. The Loan Documents include, but are not limited to, the documents listed on Exhibit E attached hereto.

Loan Fee. The words “Loan Fee” means, collectively, \$ _____, which represents the aggregate of (i) a loan fee payable to Majority Owner for the Loan in the amount of \$ _____ relating to the construction phase of the Loan, and (ii) the loan fee payable to Majority Owner for the Loan \$ _____ relating to the permanent phase of the Loan.

Loan Funds. The words “Loan Funds” mean the undisbursed proceeds of the Loan under this Agreement together with any equity funds or other deposits required from Borrower under this Agreement.

Note. The word “Note” means the Promissory Note dated the date of this Agreement, in the principal amount of ///[Six Million Five Hundred Thousand and No/100th Dollars (\$6,500,000)]/// from Borrower to Issuer, and endorsed by Issuer to the Bond Trustee, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for that promissory note (as assigned to Bond Trustee).

Official Records. The words “Official Records” mean the Official Records of the County of San Diego, State of California.

Owner. The word “Owner” shall have the meaning given such term in the Indenture.

Partnership Agreement. The words “Partnership Agreement” mean that certain Amended and Restated Agreement of Limited Partnership of Borrower dated as of _____, 2018, among General Partner, Investor Limited Partner, Special Limited Partner, and _____, as withdrawing limited partner.

Permitted Transfer. The words “Permitted Transfer” shall mean, collectively, the following:

(i) Issuance of limited partner interests in Borrower as contemplated in the Partnership Agreement;

(ii) the transfer by the Investor of its ownership interests in Borrower to any other entity which is an Affiliate of the Investor or which is controlled directly or indirectly by _____; provided Majority Owner receives prior written notice of such transfer which notice shall include the name of the transferee;

(iii) After all Equity Capital Contributions have been made by Investor Limited Partner, Majority Owner shall not unreasonably withhold its consent to the transfer by Investor of its ownership interests in Borrower to any other entity; and

(iv) The removal of a General Partner, in accordance with the Partnership Agreement, of Borrower as a result of any default by such General Partner under the Partnership Agreement and the substitution of the Investor Limited Partner or an affiliate thereof which is controlled directly or indirectly by _____ (“**Substitute General Partner**”), as a general partner of Borrower (in place of the removed General Partner), but only so long as, within ninety (90) days after the removal of General Partner, the Substitute General Partner transfers

its general partnership interest to a new General Partner approved by Majority Owner in Majority Owner's sole and absolute discretion.

Person. The word "Person" means any entity, whether an individual, trustee, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Agency or otherwise.

Plans and Specifications. The words "Plans and Specifications" mean the scope of work for the Project which has been approved and initialed by Majority Owner, together with such changes and additions as may be approved by Majority Owner in writing.

Project. The word "Project" means the construction of the Improvements on the Property, including, without limitation, installation of equipment and fixtures, landscaping, and all other work necessary to make the Property usable and complete for the intended purposes. The Project includes the following work: the construction of a 58-unit apartment project located on the Real Property, all in accordance with the Plans and Specifications approved by Majority Owner.

Project Documents. The words "Project Documents" mean the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

Property. The word "Property" means the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the real property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property.

Real Property. The words "Real Property" mean the real property located in in County of San Diego, State of California, and legally described as:

See Exhibit A attached hereto and by this reference incorporated herein.

Regulatory Agreements. The words "Regulatory Agreements" mean, collectively: (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 1, 2018 between Issuer and Borrower ("**Bond Regulatory Agreement**"); and (ii) the City Regulatory Agreement.

Reservation Letter. The words "Reservation Letter" mean that certain reservation letter issued by the California Tax Credit Allocation Committee with respect to the Project dated as of _____, as amended.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other

agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Documents. The words “Security Documents” means, collectively, the Deed of Trust, any other Security Agreement, the Replacement Reserve Agreement, any UCC-1 or UCC-2 Financing Statement filed by Issuer, Bond Trustee or Majority Owner, and any other mortgage, deed of trust, security agreement or assignment now, heretofore or hereafter executed to secure the obligations of Borrower or any Guarantor to Issuer, Bond Trustee or Majority Owner under any Loan Document.

Security Interest. The words “Security Interest” mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor’s lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device for this Loan.

Seller. The word “Seller” shall have the meaning given such term in the eighth WHEREAS paragraph to this Agreement.

Seller Deed of Trust. The words “Seller Deed of Trust” shall have the meaning given such term in the ninth WHEREAS paragraph to this Agreement.

Seller Loan. The words “Seller Loan” shall have the meaning given such term in the ninth WHEREAS paragraph to this Agreement.

Seller Loan Agreement. The words “Seller Loan Agreement” shall have the meaning given such term in the ninth WHEREAS paragraph to this Agreement.

Seller Loan Documents. The words “Seller Loan Documents” shall mean, collectively, the Seller Note, the Seller Deed of Trust, and any other document evidencing, securing, guaranteeing or otherwise relating to the Seller Loan.

Seller Subordination Agreement. The words “Seller Subordination Agreement” means that certain Subordination Agreement between Bond Trustee, Seller, Majority Owner and Borrower, subordinating the Seller Deed of Trust to the lien and charge of the Security Instrument.

Special Limited Partner. The words “Special Limited Partner” mean

Subordinate Financing. The words “Subordinate Financing” mean, collectively, the City Loan and the Seller Loan.

Subordinate Lender. The words “Subordinate Lenders” mean collectively, the City, the Housing Authority and Seller.

Subordinate Loan Documents. The words “Subordinate Loan Documents” mean, collectively, the City/Housing Authority Loan Documents and the Seller Loan Documents.

Subordinate Loan. The words “Subordinate Loan” mean, collectively, the City Loan, the Housing Authority Loan and the Seller Loan.

Subordination Agreements. The words “Subordination Agreements” mean, collectively, the City/Housing Authority Subordination Agreement, the Seller Subordination Agreement and the TCAC Subordination Agreement.

Tax Certificate. The words “Tax Certificate” mean that certain Tax Certificate as to Arbitrage and the provisions of Section 103 and 141-150 of the Internal Revenue Code of 1986 dated as of the Closing Date, between Issuer and Borrower, relating to the Bonds.

Tax Credits. The words “Tax Credits” means all federal and state low-income housing tax credits for the Property, allocated to the Project by the State of California, acting through its Tax Credit Allocation Committee (“TCAC”) under Section 42 of the Internal Revenue Code (the “Code”).

TCAC Subordination Agreement. The words “TCAC Subordination Agreement” mean that certain Subordination and Intercreditor Agreement dated as of even date herewith by and among Borrower, California Tax Credit Allocation Committee (“TCAC”), Bond Trustee and Majority Owner, subordinating any existing extended use agreements in favor of TCAC encumbering the Property.

Term Loan. The words “Term Loan” shall have the meaning set forth in the Note.

Term Loan Maturity Date. The words “Term Loan Maturity Date” shall have the meaning set forth in the Note.

Title Policy. The words “Title Policy” mean the ALTA lender’s policy of title insurance required pursuant to this Agreement.

UCC. The words UCC mean the California Uniform Commercial Code.

3. LOAN. The Loan shall be in the principal sum of ///[Six Million Five Hundred Thousand and No/100th Dollars (\$6,500,000)]/// and shall bear interest on so much of the principal sum as shall be advanced pursuant to the terms of this Agreement, the Loan Documents and the Indenture. The Loan shall bear interest on each Advance from the date of the Advance in accordance with the terms of the Note. Borrower shall use the proceeds of the Loan solely for the payment of (a) the costs of acquiring and constructing the Improvements and equipping the Project in accordance with the Plans and Specifications and the Budget; (b) other costs and expenses incurred or to be incurred in connection with the construction of the Improvements as Majority Owner, in its sole discretion, shall approve; and (c) if permitted by Majority Owner, interest due under the Note during construction. The obligation of Borrower to repay the Loan shall be evidenced by the Note. Contemporaneously with the issuance of the Bonds, the Issuer will endorse the Note without recourse to the order of the

Bond Trustee, as the assignee of the Issuer. Borrower will repay the Loan in accordance with the provisions of the Note and this Agreement.

4. LOAN REPAYMENT AND PAYMENT OF OTHER AMOUNTS.

Borrower hereby acknowledges its indebtedness to the Issuer and covenants to repay the Loan, and to pay interest on the amount of the Loan outstanding from time to time in accordance with the following:

(a) Subject to any limitation set forth in the Note and the paying to Majority Owner of any applicable "Prepayment Premium" described herein, Borrower may, at its option, prepay principal on the Note, in whole or in part, in order to effect a full or partial redemption of the Bonds pursuant to Section 4.01 of the Indenture by paying to Bond Trustee an amount equal to the principal amount of the Bonds to be redeemed, together with all accrued and unpaid interest through the date of full or partial redemption of the Bonds on the portion of principal prepaid. Borrower shall give Majority Owner not less than fifteen (15) days' advance written notice of its intention to make a prepayment pursuant to this Section 4.

(b) Following the occurrence and continuance of an Event of Default under this Agreement and demand by Majority Owner for full redemption of the Bonds pursuant to Section 4.01(h) of the Indenture, Borrower shall immediately pay to Bond Trustee the full amount of outstanding principal of the Note, together with all accrued and unpaid interest thereon through the date of redemption of the Bonds.

(c) For so long as any principal of the Loan is outstanding, Borrower shall pay to Bond Trustee (i) on or before the first Business Day of each month, an amount equal to the interest accrued on the Loan during the previous month as determined pursuant to the paragraph entitled "Payment" set forth in the Note, subject to Section 5(c) hereof.

(d) In the event of damage to or destruction or condemnation of the Project or any part thereof, Borrower shall pay to Majority Owner, for full or partial redemption of the Bonds pursuant to Section ///[4.01(e)]/// of the Indenture, such portion of the Loan as is required to be paid pursuant to the paragraph entitle "Property Damage Insurance" set forth in the Deed of Trust, plus accrued and unpaid interest through the date of redemption of the Bonds, without premium.

(e) Borrower agrees to pay to Majority Owner, at the same time as the monthly payments pursuant to the section entitled "Payment" set forth in the Note, at Majority Owner's sole election following an Event of Default, one-twelfth (1/12th) of the amount budgeted by Borrower for annual premiums for insurance required to be maintained pursuant to this Agreement and for real estate taxes or other charges for governmental service for the current year (except for utility charges) which shall be disbursed by Majority Owner from time to time.

(f) Borrower agrees to make such other payments to Bond Trustee, in the amounts and at the times necessary to enable the Bond Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds when due, whether as principal of, premium, or

interest on, or otherwise, and whether at maturity or by redemption (including mandatory sinking fund redemption) or acceleration or otherwise.

(g) Borrower also agrees to pay, (i) all taxes and assessments of any type or character charged to the Issuer or to the Majority Owner affecting the amount available to the Issuer or the Majority Owner from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Majority Owner and taxes based upon or measured by the net income of the Majority Owner; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Majority Owner, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Majority Owner; (ii) all reasonable fees, charges and expenses of the Majority Owner for services rendered under the Indenture, as and when the same become due and payable; (iii) the fees of the Issuer, payable as set forth in Section ///[7]/// of the Regulatory Agreement, all other fees required to be paid to the Issuer under the Regulatory Agreement or any other agreement between the Issuer and Borrower, or any ordinance or regulation applicable to Borrower or the Project, any fees imposed by the Issuer in connection with any consents, waivers or amendments requested by Borrower, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with this Agreement, the Bond Regulatory Agreement, the Loan Documents, the Bonds or the Indenture, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving this Agreement, the Bond Regulatory Agreement, the Agreement, the Loan Documents, the Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing; and (iv) these obligations and those in Section 5 and 25(k), below, shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Agreement or the Indenture.

(h) Borrower agrees: (i) to pay to each of Majority Owner and the Bond Trustee from time to time reasonable compensation for all services rendered by it (including the reasonable compensation, expenses and disbursements of its agents and counsel) under the Indenture and any other agreements relating to the Bonds to which Majority Owner or the Bond Trustee is a party, which shall include, without limitation, the Bond Trustee Annual Fee (collectively, "**Ordinary Fees and Expenses**"); (ii) except as otherwise expressly provided in the Indenture, this Agreement or such other agreements related to the Bonds or the Project, to reimburse Majority Owner and the Bond Trustee upon its request for all reasonable expenses, disbursements and advances (including reasonable counsel fees) incurred or made by Majority Owner or the Bond Trustee (provided that Majority Owner shall not be required to make advances) in accordance with any provision of the Indenture or other agreements to which

Majority Owner or the Bond Trustee is a party (including, but not limited to, the reasonable compensation and the expenses and disbursements of its agents and counsel and the cost of printing the Bonds), except any such expense, disbursement or advance (provided that Majority Owner or the Bond Trustee shall not be required to make advances) as may be attributable to its gross negligence or willful misconduct, (iii) to pay to an arbitrage consultant reasonable compensation for all services rendered by it, and (iv) to pay to the Bond Trustee any rebatable arbitrage required to be paid to the federal government.

(i) Borrower agrees to pay on the Maturity Date, (a) to Bond Trustee, the full amount of outstanding principal of the Note, together with all accrued and unpaid interest thereon through the Maturity Date and, (b) to Bond Trustee, Majority Owner or the Issuer, as applicable, all other amounts due to the Bond Trustee, the Majority Owner or the Issuer (solely in its capacity as Issuer under the Bond Documents and Loan Documents) under the Loan Documents or the Bond Documents.

5. ADDITIONAL CHARGES. Borrower agrees to pay each and all of the following (collectively, the “**Additional Charges**”):

(a) upon the occurrence and continuance of a default under the Indenture (beyond any applicable cure period) or an Event of Default under this Agreement, to or upon the order of the Issuer or Majority Owner, when due, all reasonable fees of the Issuer, Majority Owner or the Bond Trustee for services rendered under the Indenture and any other amounts due under Section 4 and 25(k) hereof which are not included in Ordinary Fees and Expenses, and all reasonable fees and charges of any registrars, legal counsel, accountants, engineers, public agencies and others incurred in the performance, on request of the Issuer, of services required under the Indenture or this Agreement for which such persons are entitled to payment or reimbursement, provided that Borrower may, upon notice to the Issuer and without creating a Default hereunder, contest in good faith the necessity or reasonableness of any such services, fees or expenses other than Ordinary Fees and Expenses, but the Issuer’s final decision shall control;

(b) (i) all indemnity payments required to be made under this Agreement and the Regulatory Agreement (such indemnity payments being due to the Issuer or Indemnified Party upon written demand therefor and accruing interest at the Default Rate sixty (60) days after notice of demand therefor); (ii) all reasonable expenses (including reasonable legal fees and expenses) incurred by the Issuer in exercising its rights under this Agreement or the Regulatory Agreement following a Default; and (iii) all other reasonable expenses incurred by the Issuer in relation to the Project or the Bonds which are not otherwise required to be paid by Borrower under the terms of this Agreement or any separate fee agreement, including costs incurred as a result of a request by Borrower; and

(c) interest, at the Default Rate, on all payments not made by Borrower under Section 4, this Section 5(c) and Section 25(k) when due, to the parties entitled thereto.

6. MATURITY DATE. The Maturity Date of the Loan shall be the Original Maturity Date, at which time all sums due and owing under this Agreement, the other Loan

Documents and the Bond Documents shall be repaid in full, subject to the right to extend the Original Maturity Date as provided in the Note. All payments due to Bond Trustee, Majority Owner and Issuer (solely in its capacity as Issuer under the Loan Documents and Bond Documents), as applicable, under this Agreement, whether at the Maturity Date or otherwise, shall be paid in immediately available funds.

7. FEES AND EXPENSES. Whether or not the Loan shall be consummated, Borrower shall assume and pay upon demand all out-of-pocket expenses incurred by Issuer, Bond Trustee and Majority Owner in connection with the preparation of loan documents and the making of the Loan, including without limitation the following: (a) all closing costs, fees, and disbursements; (b) all expenses of legal counsel to Issuer, Bond Trustee and Majority Owner; and (c) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

8. RECORDING OF SECURITY DOCUMENT. No Loan Funds shall be disbursed hereunder until: (a) Borrower has signed the Loan Documents to which Borrower is a party; (b) the Deed of Trust and other Security Interests in the Property have been duly recorded and perfected (or Majority Owner has agreed in writing, in its sole discretion, to a “gap closing” for the Loan, in which case the title company issuing the Title Policy has committed without reservation to (i) issue all policies as if recording had occurred as of such gap closing date regardless of the actual recording date of the Deed of Trust, and (ii) to record the Deed of Trust and any other Security Interests as soon as reasonably possible in the Official Records); and (c) Majority Owner has been provided evidence, satisfactory to Majority Owner, that Borrower has obtained all insurance required under this Agreement or any Loan Agreement and that Issuer’s liens on the Property and Improvements are valid perfected first liens, subject only to such exceptions, if any, acceptable to Majority Owner. In the event of a “gap closing” described above, Borrower shall cause the Title Company to record (and deliver to Majority Owner evidence thereof) the Deed of Trust and any other Security Instruments no later than one (1) business day following such “gap closing”.

9. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Issuer, Bond Trustee and Majority Owner as of the date of this Agreement and as of the date of each disbursement of Loan proceeds:

(a) General.

(i) Access. The Property is contiguous to publicly dedicated streets, roads, or highways providing access to the Property.

(ii) Assessment of Property. The Property is and will continue to be assessed and taxed as an independent parcel by all governmental authorities.

(iii) Authorization. The execution, delivery, and performance of this Agreement by Borrower, to the extent to be executed, delivered or performed by Borrower, (i) have been duly authorized by all necessary action by Borrower; (ii) do not require the consent or approval of any other person, regulatory authority or governmental body; and (iii) do not

conflict with, result in a violation of, or constitute a default under (a) any provision of its articles of incorporation or organization, or bylaws, or any agreement or other instrument binding upon Borrower or (b) any law, governmental regulation, court decree, or order applicable to Borrower.

(iv) **Binding Effect.** This Agreement, the Note and all other Loan Documents to which Borrower is a party (i) have been duly executed and delivered by Borrower, and (ii) are valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

(v) **Compliance with Governing Authorities.** Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, laws, rules, regulations, zoning ordinances, and federal, state, and local requirements applicable to the Project. The Project will at all times and in all respects conform to and comply with the requirements of all such easements, covenants, conditions, restrictions, reservations, laws, rules, regulations, zoning ordinances, and federal, state, and local requirements.

(vi) **Financial Information.** Each financial statement of Borrower delivered by Borrower or its general partners, agents or representatives to Majority Owner prior to the date hereof truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement so delivered to Majority Owner. Borrower has no material contingent obligations except as disclosed in such financial statements.

(vii) **Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99 499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq., the Hazardous Waste Control Law, California Health and Safety Code Section 25100, et seq., the Medical Waste management Act, California Health and Safety Code Section 25015, et seq., and the Porter-Cologne Water Quality Control Act, California Health and Safety Code Section 13000, et seq., all regulations pertaining thereto, and all other statutes, laws and ordinances of the United States and of any state, county or municipality in which the Property or any portion thereof is located, or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing (collectively, the "Environmental Laws"). As used herein, the term "Hazardous Substance" shall mean any hazardous waste or hazardous substance. Except as disclosed to and acknowledged by Majority Owner in writing and except for those Hazardous Substances normally used in the construction and operation of a multifamily residential apartment and mixed use project (which shall at all times be used and stored in compliance with all applicable Environmental Laws),

Borrower represents and warrants to Majority Owner that: (a) during the period of Borrower's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any Person on, under, or about any of the Property; (b) Borrower has no actual knowledge of, or reason to believe that there has been, (i) other than those substances typically used in the construction and operation of a multifamily residential apartment project, any use or storage of any Hazardous Substance by any prior owners or occupants of any of the Property; (ii) any generation, manufacture, treatment, disposal, release, or threatened release of any Hazardous Substance by any prior owners or occupants of any of the Property, or (iii) any actual or threatened litigation or claims of any kind by any Person relating to such matters; and (c) (i) neither Borrower nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any Hazardous Substance on, under, or about the Property (except Hazardous Substances normally used in the construction and operation of a multifamily residential apartment and mixed use project (which shall at all times be used and stored in compliance with all applicable Environmental Laws)) and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Borrower authorizes Majority Owner and its agents to enter upon the Property to make such inspections and tests as Majority Owner may deem appropriate to determine compliance of the Property with this section of the Agreement. Any inspections or tests made by Majority Owner shall be for Majority Owner purposes only and shall not be construed to create any responsibility or liability on the part of Majority Owner to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Property for Hazardous Substances. Borrower hereby (a) releases and waives any future claims against Issuer, Bond Trustee and Majority Owner for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Majority Owner against any and all claims, losses, liabilities, damages, penalties, and expenses which Issuer, Bond Trustee or Majority Owner may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Borrower's ownership or interest in the Property, whether or not the same was or should have been known to Borrower, except to the extent to which Issuer, Bond Trustee or Majority Owner itself, as applicable, released any Hazardous Substance in, on or under the Property. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of the Deed of Trust and shall not be affected by acquisition by Issuer, Bond Trustee or Majority Owner of any interest in the Property, whether by foreclosure or otherwise.

(viii) Information. All information heretofore or contemporaneously herewith furnished by Borrower to Issuer, Bond Trustee or Majority Owner for the purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all information hereafter furnished by or on behalf of Borrower to Issuer, Bond Trustee or Majority Owner for the purposes of or in connection with this Agreement or any transactions contemplated hereby will be, true and accurate in every material respect on the date as of which

such information is dated or certified; and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading.

(ix) Lien Priority. Except as set forth in the Subordination Agreements or otherwise previously disclosed to Majority Owner in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Issuer's Security Interests and rights in and to such Collateral.

(x) Litigation and Claims. No litigation or claim (including those for unpaid taxes) against Borrower is pending or threatened which, if adversely determined, would materially and adversely affect Borrower's financial condition or properties, and no other event has occurred which is reasonably likely to materially and adversely affect Borrower's financial condition or properties, other than litigation, claims or other events, if any, that, prior to the date of this Agreement, have been disclosed to and acknowledged by Majority Owner in writing.

(xi) Organization. Borrower is a limited partnership that is, and at all times shall be, duly formed and validly existing under and by virtue of the laws of the State of California. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 430 F Street, Chula Vista, California 91910. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Majority Owner of any change in the location of Borrower's principal office. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

(xii) Preservation of Tax Exemption. Borrower covenants that Borrower will take all actions within its control (or the control of its affiliates) necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes (excluding any period during which the Bonds are held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code), and Borrower will neither take (nor allow any affiliate to take) any action, nor make or permit (nor allow any affiliate to make or permit) any use of proceeds of the Bonds or other funds of Borrower treated as proceeds of the Bonds at any time during the term of the Bonds which would cause interest on the Bonds to be included in gross income for federal income tax purposes. Borrower also covenants that, to the extent arbitrage rebate requirements of Section 148 of the Code are applicable to the Bonds, Borrower will take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bonds, including the calculation and payment of any penalties that Borrower has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section

148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

(xiii) Project Costs. To Borrower's best knowledge, after investigation, the project costs set forth in the Budget are all of the costs and expenses necessary to complete the Improvements in a good and workmanlike manner, free of liens, and according to the Plans and Specifications approved by Majority Owner.

(xiv) Utility Services. All utility services appropriate to the use of the Project after completion of construction are available at the boundaries of the Property.

(xv) Title to Property. Borrower has, or on the date of first disbursement of Loan proceeds will have, good and marketable title to the fee estate in the Property free and clear of all defects, liens, and encumbrances, excepting only (i) liens for taxes, assessments or governmental charges or levies not yet delinquent, (ii) (A) the City Deed of Trust, which must at all times be subordinate to the Deed of Trust, (B) the Seller Deed of Trust, which must at all times be subject and subordinate to the Deed of Trust, (C) any Majority Owner approved restrictions for the benefit of City in connection with the City Loan, which must at all times be subordinate to the Deed of Trust, and (D) following its recordation, the Extended Use Agreement, and (iii) any other liens or encumbrances set forth on Schedule B, Part I of the Title Policy as approved by Majority Owner prior to the date of this Agreement.

(b) Bonds-Related Representations.

(i) Other than the Bonds, no other obligations have been or are expected to be issued under Section 103 of the Code for sale at substantially the same time as the Bonds are sold pursuant to a common plan of marketing and at substantially the same rate of interest as the Bonds and which are payable in whole or part by Borrower or otherwise have with the Bonds any common or pooled security for the payment of debt service thereon, or which are otherwise treated as the same "issue of obligations" as the Bonds as described in Revenue Ruling No. 81 216.

(ii) Borrower is not in the trade or business of selling properties such as the Project and has acquired the Project for investment purposes only or otherwise for use by Borrower in its trade or business. Therefore Borrower has no present intention to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project in the foreseeable future, other than in connection with the purchase option granted to General Partner in the Partnership Agreement.

(iii) Borrower has reviewed and approved the provisions of the Indenture.

(iv) To the best of Borrower's knowledge, no member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in Borrower, the Project or the transactions contemplated hereby.

(v) The covenants, representations and warranties of Borrower in the Regulatory Agreement are true and correct as of the date hereof and are incorporated herein by reference and made a part of this Agreement.

(vi) Borrower has not entered into the transaction evidenced hereby with the actual intent to hinder, delay or defraud any creditor and Borrower has received reasonably equivalent value in exchange for its obligations hereunder and under the Deed of Trust and the Regulatory Agreement.

(vii) Borrower has no known material contingent liabilities except as created by the Partnership Agreement.

(viii) Borrower has no material financial obligation under any Indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Project are otherwise bound, other than (a) obligations under this Agreement and the other Loan Documents to which Borrower is a party; (b) the Subordinate Loan Documents; and (c) obligations which may be incurred by Borrower from time to time in the ordinary course of business.

(ix) Borrower has not borrowed or received other debt financing that has not been heretofore repaid in full.

(x) Borrower is not (a) an “investment company” or a company “controlled by an investment company” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict its ability to borrow money other than Article 15 of the California State Constitution.

(xi) Except as disclosed in the Title Policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements affecting the Project, nor, to the knowledge of Borrower, are there any contemplated improvements to the Property that may result in such special or other assessments.

(xii) No statement of fact made by Borrower herein or in the Loan Documents to which Borrower is a party contains any untrue statement of a material fact or omits to state any material fact necessary to make statements made by Borrower herein or therein not materially misleading. There is no fact presently known to Borrower which has not been disclosed which materially adversely affects or, to the best of Borrower’s knowledge, would materially adversely affect the business, operations or conditions (financial or otherwise) of Borrower.

(xiii) All reports, documents, instruments, information and forms of evidence delivered to Majority Owner or Issuer by Borrower concerning the Loan or required by the Loan Documents are (or, in the case of materials prepared by persons other than

Borrower or its members or general partner, are to the best of Borrower's knowledge) accurate, correct and sufficiently complete to give Majority Owner or Issuer, as applicable, true and accurate knowledge of their subject matter.

(xiv) Borrower owns directly, and not through any affiliated entity, all of the personal property and fixtures necessary for the operation of the Property for the uses presently being conducted thereon.

(xv) Before any Guarantor became obligated in connection with the Loan, Borrower made full disclosure to such Guarantor regarding Borrower's financial condition and business operations, the present and former condition, uses and ownership of the Property and all other circumstances bearing upon Borrower's ability to pay and perform its obligations under the Loan Documents.

(xvi) Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which Borrower is a party or of which it is a beneficiary, including the Indenture; that it understands the risks inherent in such transactions; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Documents and the Indenture or otherwise relied on the Issuer for any advice.

(c) Representations and Warranties of Borrower Related to Certain Tax Matters. Borrower further represents and warrants that:

(i) as of the Closing Date, Borrower is in compliance with all requirements of the Tax Certificate, and the representations set forth in the Tax Certificate pertaining to Borrower and the Project are true and accurate;

(ii) the Bonds are not "federally guaranteed" as defined in Section 149(b) of the Code;

(iii) in accordance with Section 147(b) of the Code, the weighted average maturity of the Bonds does not exceed one hundred twenty percent (120%) of the weighted average reasonably expected economic life of the facilities (comprising the Project) financed with the proceeds of the Bonds, determined as of the date the Bonds are issued;

(iv) neither Borrower nor, to the best knowledge of Borrower, any "related person" to Borrower (within the meaning of Section 147(a)(2) of the Code), will purchase the Bonds pursuant to any arrangement, formal or informal;

(v) the information furnished by Borrower and used by the Issuer in preparing the certificate pursuant to Section 148 of the Code and information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of the issuance of the Bonds;

(vi) the acquisition and rehabilitation of the Project were not commenced prior to the sixtieth (60th) day preceding the Issuer's expression of intent with respect to the Project on _____, and no obligation for which reimbursement will be sought from proceeds of the Bonds relating to the rehabilitation or equipping of the Project was paid or incurred prior to sixty (60) days prior to such date;

(vii) the Project is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable on the Closing Date and the representations and warranties of Borrower in Sections 1, 3, 4 and 5 of the Regulatory Agreement are true and correct;

(viii) Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Law, the Act and the Code, and pursuant to leases which comply with all applicable laws; and

(ix) no money on deposit in any fund or account in connection with the Bonds, whether or not such money was derived from other sources, will be used by or under the direction of Borrower in a manner which would cause the Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code.

(d) **Survival of Representation and Warranties.** Borrower understands and agrees that Majority Owner is relying upon the above representations and warranties in making the above referenced Loan to Borrower. Borrower further agrees that the foregoing representations and warranties shall be continuing in nature and shall remain in full force and effect until such time as Borrower's Loan and Note shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

10. TAX EXEMPTION; BOND REGULATORY AGREEMENT. Borrower (and with respect to Section 10(a), (b) and (c), the Issuer) hereby covenants, represents and agrees as follows:

(a) not to knowingly take or omit to take any action with respect to this Agreement (with respect to the Issuer) and not to take or omit to take any action with respect to this Agreement or the Project (solely with respect to Borrower) that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds (so long as the Bonds are not owned by a person or entity which is a "substantial user" of the Property);

(b) to take such action or actions, including amendment of the Bond Regulatory Agreement, to the extent deemed necessary in the opinion of Bond Counsel, to preserve or perfect the exclusion of interest on the Bonds from gross income for federal income tax purposes;

(c) at the expense of Borrower, to file of record such documents and take such other steps as are necessary in order to insure that the requirements and restrictions of the

Bond Regulatory Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of the Bond Regulatory Agreement in the real property records of San Diego County, California;

(d) to notify any subsequent owner of the Project of the requirements and restrictions contained in the Bond Regulatory Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Bond Regulatory Agreement; and

(e) to provide to the Issuer notice of any action (other than actions in its ordinary course of business) which impacts the Issuer's rights hereunder or under the Bond Regulatory Agreement.

11. CONDITIONS PRECEDENT TO ISSUANCE OF BOND, CLOSING OF THE LOAN AND THE INITIAL ADVANCE. Issuer's obligation to issue the Bonds, Majority Owner's and Issuer's obligation to enter into this Agreement, the Bond Documents, and the Loan Documents and Majority Owner's obligation to consent to the initial Advance, which is not to exceed \$55,000 (the "**Initial Advance**") and each subsequent Advance under this Agreement shall be subject to the fulfillment as determined by Majority Owner, in its sole and absolute discretion, of all of each of the conditions set forth in this Agreement and the following conditions precedent:

(a) **Approval of General Contract.** Majority Owner shall have approved the contract with the General Contractor ("**General Contract**"), and Borrower shall have assigned all rights in this contract to Issuer pursuant to the document listed as item 7 on Exhibit E. Majority Owner shall have the right to communicate with any person to verify the facts disclosed by any application for any Advance, or for any other purpose.

(b) **Loan Fee and Other Fees and Expenses.** Borrower shall have paid to Majority Owner, in immediately available funds, (i) the Loan Fee, and (ii) all costs and expenses incurred by Issuer, Bond Trustee and Majority Owner in connection with the issuance of the Bonds, the making of the Loan and the negotiation and closing of the Loan Documents and Bond Documents, including but not limited to, all costs and expenses described in Section 25(k).

(c) **Equity Infusion.** Investor Limited Partner shall have made the first installment of Equity Capital Contributions shown on Exhibit D into the Project in the amount of \$_____, which amount shall be evidenced by the combination of prepaid development costs approved by Majority Owner and cash, which sum shall be deposited with Bond Trustee into the Equity Account of the Project Fund or disbursed through escrow at Loan closing to pay Project Costs as set forth on the Budget. General Partner shall have made a capital contribution to the Borrower in the amount of \$100 which amount shall be evidenced by a combination of prepaid development costs approved by Majority Owner and cash, which sum shall be deposited with Bond Trustee in the Equity Account of the Project Fund or disbursed through escrow at Loan closing to pay Project costs set forth on the Budget.

(d) Approval of Contractors, Subcontractors, and Materialmen.

Majority Owner shall have approved the General Contractor and a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, and labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialmen. Majority Owner shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

(e) Payment and Performance Bond.

Borrower shall have provided to Majority Owner the General Contractor's payment and performance bond in form acceptable to Majority Owner, issued by a surety acceptable to Majority Owner, for the full amount of the General Contract and which shall name Bond Trustee and Majority Owner each as dual obligees.

(f) Opinion of Counsel.

At Closing, Issuer and Majority Owner shall have received an opinion of one or more counsel selected by Borrower and reasonably satisfactory to Issuer and Majority Owner to the effect that (i) Borrower has the power and authority to execute and deliver the Note, Deed of Trust, this Agreement, and the Loan Documents; (ii) upon execution by the parties thereto and upon such recording or filing thereof as may be specified in the opinion, the Note, Deed of Trust, this Agreement, and the Loan Documents will be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (iii) the Deed of Trust creates the lien it purports to create on the Property, and effectively assigns the leases purported to be assigned thereby, and stating the manner of recording or filing to be effected in order to establish, preserve and protect the Issuer's interest therein, and whether there is any necessity for the re-recording or re-filing of such instruments and setting forth such re-recording or re-filing requirements, if any; (iv) in the event of the foreclosure or other method of enforcement of the remedies provided for in the Deed of Trust, any leases of the Property will, at Majority Owner's option, remain in full force and effect between the lessees thereunder and the Bond Trustee or any purchaser of the Property pursuant to such remedial action; and (v) as to such other matters incident to the transactions contemplated hereby, as Majority Owner may require. At Closing, Majority Owner shall have received an opinion of "Bond Counsel" and/or "Issuer Counsel", opining as to (A) the due formation, qualification and good standing of the Issuer, (B) the due execution delivery and performance by the Issuer of the Indenture, (C) the enforceability of the Indenture and (D) interest accruing on the Bonds being excluded from federal income tax pursuant to Section 103 of the Code (provided that such exclusion is not available with respect to interest on the Bonds for any period during which the Bonds are held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code);

(g) Plans and Specifications.

Majority Owner shall have received and accepted a complete set of Plans and Specifications setting forth all construction of the Improvements for the Project

(h) **Subordination Agreements.** Borrower shall have provided to Majority Owner the Subordination Agreements and any other executed priority and subordination agreements as required and approved by Majority Owner.

(i) **Budget and Schedule of Estimated Advances.** Majority Owner shall have approved detailed budget and cash flow projections of total Project costs and a schedule of the estimated amount and time of disbursements of each Advance. This budget and schedule (the “**Budget**” and “**Schedule of Estimated Advances**”) are attached hereto as Exhibit B and by this reference incorporated herein. Majority Owner shall have determined to Majority Owner’s reasonable satisfaction that the Project can be constructed, operating and leased for a total cost not in excess of the final approved Budget.

(j) **Borrower’s Authorization.** Borrower shall have provided (and shall cause General Partner and Guarantor to provide, as applicable), in form and substance satisfactory to Majority Owner properly certified resolutions, duly authorizing the execution and delivery of the Loan Documents to which Borrower, General Partner and/or Guarantor are a party, and the consummation of the Project, and such other authorizations and other documents as Majority Owner in its sole discretion may require.

(k) **Zoning.** Borrower shall have furnished evidence satisfactory to Majority Owner that the Real Property is duly and validly zoned for the construction, maintenance, and operation of the Project.

(l) **Soils Test.** If required by Majority Owner, Borrower shall have provided Majority Owner with test of the Property’s soil. This report, prepared by an engineering firm acceptable to Majority Owner must indicate that the soil conditions of the Property are sufficient to support the Project.

(m) **Hazardous Substance Report.** Borrower shall have provided Majority Owner with a report showing that the Property is free from hazardous substances. This report must be prepared by an environmental services company acceptable to Majority Owner (“**Environmental Consultant**”). The report should detail a site reconnaissance, research into appropriate environmental agency files, and a summary of findings and recommendations. Environmental Consultant shall issue reliance letters in favor of Majority Owner with respect to the Environmental Report in form and substance satisfactory to Majority Owner. A 50-year history of Property title and uses will also be provided.

(n) **Title Insurance.** Borrower shall have provided to Majority Owner an “LP-10” ALTA Lender’s extended coverage policy of title insurance (2006) with such endorsements as Majority Owner may reasonably require, issued by a title insurance company acceptable to Majority Owner and in a form, amount, and content reasonably satisfactory to Majority Owner, insuring or agreeing to insure that the Deed of Trust on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as specifically accepted by Majority Owner in writing (the “**Title Policy**”).

(o) **Insurance.** Unless waived by Majority Owner in writing, Borrower shall have delivered to Majority Owner the following insurance policies or evidence thereof: (a) an all risks course of construction and liability insurance policies covering the Improvements issued in an amount and by a company acceptable to Majority Owner, containing a loss payable or other endorsement satisfactory to Majority Owner insuring Bond Trustee as mortgagee, together with such other endorsements as may be required by Majority Owner, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Majority Owner; (b) flood insurance if required by Majority Owner or applicable law; (c) property damage insurance on all of Borrower's inventory, equipment and assets for its replacement value, with Majority Owner designated as loss payee; (d) 6-month rent loss insurance; (e) fire and other risk insurance in the minimum sum of \$_____ ; (f) public liability insurance in the minimum sum of \$1,500,000.00; and (g) such other insurance as Majority Owner may require with respect to Borrower's Property and operations; all of the foregoing in form, amounts, coverages and with insurance companies reasonably acceptable to Majority Owner. Borrower, upon request of Majority Owner, will deliver to Majority Owner from time to time the policies or certificates of insurance in form satisfactory to Majority Owner, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' days prior written notice to Majority Owner. In connection with all policies covering assets in which Majority Owner holds or is offered a security interest for the Loan, Borrower will provide Majority Owner with such loss payable or other endorsements as Majority Owner may require.

WARNING

UNLESS BORROWER PROVIDES MAJORITY OWNER WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED HEREIN, MAJORITY OWNER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT MAJORITY OWNER'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT BORROWER'S INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE MAJORITY OWNER PURCHASES MAY NOT PAY ANY CLAIM BORROWER MAKES OR ANY CLAIM MADE AGAINST BORROWER. BORROWER MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT BORROWER HAS OBTAINED PROPERTY COVERAGE ELSEWHERE.

BORROWER IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY MAJORITY OWNER. THE COST OF THIS INSURANCE MAY BE ADDED TO THE INDEBTEDNESS. IF THE COST IS ADDED TO THE NOTE BALANCE, THE INTEREST RATE ON THE NOTE WILL APPLY TO THIS ADDED AMOUNT. THE CLOSING DATE OF COVERAGE MAY BE THE DATE BORROWER'S PRIOR COVERAGE LAPSED OR THE DATE BORROWER FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE MAJORITY OWNER PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE BORROWER CAN OBTAIN ON BORROWER'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY

**DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE
REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

(p) This Agreement, the Loan Documents and the Bond Documents.

This Agreement, each Related Document and the Bond Documents shall have each been duly executed, acknowledged (where applicable) and delivered by Borrower and/or the applicable parties thereto to Issuer and Bond Trustee, each in a form and substance approved by Majority Owner.

(q) Recordable Documents. The Bond Regulatory Agreement, the Deed of Trust, the Deed of Trust Assignment, any City Regulatory Agreement or restrictive covenant, the City Deed of Trust, the City Subordination Agreement, the Seller Deed of Trust, the Seller Subordination Agreement, and the TCAC Subordination Agreement shall have each recorded in the Official Records, IN THAT ORDER. All UCC-1 Financing Statements required by Majority Owner in connection with the Loan shall have been filed with the Secretary of State of the State of California.

(r) Survey. Borrower shall, at its sole expense, have delivered to Majority Owner, in form and substance reasonably satisfactory to Majority Owner:

(i) an ALTA survey (“**Survey**”) which (i) shows all “setbacks” and other restrictions applicable to the Property pursuant to requirements of Governmental Agencies and applicable covenants, conditions and other private restrictions, (ii) shows all easements, licenses and other rights of way, (iii) shows no encroachments onto the Property or from the Property onto adjoining property, and (iv) certifies the legal description of the Property as insured in the Title Policy; and

(ii) a certificate (the “**Surveyor’s Certificate**”) pursuant to which the person who prepared the ALTA survey certifies to Majority Owner and the applicable title insurer that the survey was made on the ground and in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as adopted by the American Land Title Association and the American Congress on Surveying and Mapping, and is correct and complete; that access to the Property, and utilities shown on the survey, are sufficient and in accordance with applicable requirements; that the Property does not fall within a designated flood hazard area; and as to such other matters as Majority Owner reasonably requires.

(s) Financial Information. Majority Owner shall have received and approved such financial statements, tax returns and other financial information as it may require regarding the financial condition of Borrower, each general partner of Borrower, each Guarantor and/or the Property.

(t) Material Project Agreements. Majority Owner shall have received and approved in writing (i) the Architecture Agreement, (ii) any engineering contracts relating to the Project, and (iii) all other Project agreements with a contract price in excess of \$10,000.

(u) **Appraisal.** Majority Owner shall have received, reviewed and approved in writing, an appraisal of the Property prepared by and appraiser selected by Majority Owner.

(v) **Payment of Fees and Expenses.** Borrower shall have paid to Majority Owner (i) the Loan Fee and (ii) all expenses specified in this Agreement as are then due and payable.

(w) **City Loan and Housing Authority Loan.** Majority Owner shall have received fully executed copies of all City/Housing Authority Loan Documents, each in a form and substance approved by Majority Owner. Majority Owner shall have received written evidence acceptable to Majority Owner that all City Loan proceeds in the amount of \$_____ and the Housing Authority Loan proceeds in the amount of \$_____ shall, in each case, have been disbursed to Borrower to pay Project costs set forth on the Budget (or deposited with Bond Trustee in the Project Fund). ///[Please confirm whether there are any new funds being disbursed or if all funds are previously disbursed.]///

(x) **Seller Loan.** Majority Owner shall have received fully executed copies of all Seller Loan Documents, each in a form and substance approved by Majority Owner. Majority Owner shall have received written evidence acceptable to Majority Owner that all Seller Loan proceeds in the amount of \$_____ shall have been disbursed to Borrower to pay Project costs set forth on the Budget (or deposited with Bond Trustee in the Project Fund).

(y) **Cash Collateral.** Borrower shall have delivered to Majority Owner, for deposit into the Borrower's Funds Account, cash collateral in the amount of \$55,000 ("Cash Collateral") to be held and disbursed in accordance with Section 15(q) of this Agreement.

12. CONDITIONS PRECEDENT TO EACH ADVANCE. Majority Owner's obligation to consent to the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment as determined by Majority Owner, in its sole, but reasonable, discretion, of each of the conditions set forth in this Agreement and the following conditions precedent:

(a) **Satisfaction of the Initial Conditions.** All conditions precedent set forth in Section 11, above, shall have been satisfied on the Closing Date and shall continue to be satisfied as of the date of the Advance.

(b) **Satisfactory Construction.** Majority Owner shall have determined, based upon its own inspections or the inspections of Majority Owner's Project Inspector or other evidence satisfactory to it, including a Property inspection report from Majority Owner's project inspector, that the Project is being constructed in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications in all material respects.

(c) **Supporting Documentation for Advances.** Borrower shall at its expense have obtained and attached to each application for an Advance (including AIA Application and

Certificate for Payment (Document G702-1992) and Continuation Sheet (Document G703-1992) or a detailed equivalent) along with copies of applicable change orders in an acceptable form, including the Advance to cover final payment to any contractor, and an affidavit from any contractor that Borrower has paid all sums due for all work, labor, equipment, material done, supplied, performed, or furnished prior to such application for an Advance and that no party having lien rights filed any such liens, in form and substance satisfactory to Majority Owner, and otherwise satisfied the requirements for an Advance below in Section 13. The application must be accompanied with an itemized payee list including a summary and, as to soft costs, copies of all invoices, included in the application, together with any supplemental items required by Majority Owner, in its reasonable discretion. Any request for Advance for the payment of deposits, Majority Owner must receive a copy of the contract or proposal showing the gross amount of the contract to Majority Owner can make a determination as to the percentage of such deposit which is being requested. Any request for Advance for the payment of costs to install the elevator in the Project will also require the final inspection sign off by the proper inspecting authority.

(d) Lien Waivers. Majority Owner shall have received a conditional waiver of mechanic's lien and/or materialman's lien, executed by the General Contractor in the amount of the lienable costs of the Project payable from the requested advance, together with unconditional waivers of mechanic's lien and/or materialman's lien executed by the General Contractor and each subcontractor or materialmen to which any portion of the immediately preceding advance has been paid.

(e) Stored Materials. To the extent an Advance is requested for Stored Materials not yet installed or incorporated into the Project, Majority Owner shall not consent to any such advance unless, in addition to the satisfaction of the other conditions set forth in this Agreement, (a) Borrower provides Majority Owner and the Project Inspector with (i) copies of related bills of sale, receipts, invoices and bills of lading demonstrating that Borrower has good title to the Stored Materials free of any encumbrances, (ii) satisfactory evidence that (a) the place of storage for the Stored Materials is on the Land or in a secure or bonded warehouse located in the jurisdiction in which the Land is situated and is readily accessible, and (b) the owner of such facility has received written instruction from Borrower such that the Majority Owner shall have access and the right to remove the Stored Materials, (iii) satisfactory evidence that the materials are adequately secured and insured, with Banner Bank, ISAOA, identified as an additional insured and loss payee, and (iv) photographs of the Stored Materials; (a) to the extent requested by Majority Owner, Borrower shall also provide copies of UCC searches against Borrower, the materials vendor, the General Contractor, and the warehouseman, if applicable, indicating no liens or claims which may affect the Stored Materials; (b) all Stored Materials shall be clearly tagged with the Borrower's name and stored separately to avoid commingling, and Majority Owner shall be provided with photos evidencing the same; and (c) Borrower shall provide Majority Owner, the Project Inspector and any applicable governmental agency or testing authority having jurisdiction over the Project with access to inspect, test or otherwise examine the Stored Materials. As used herein, "Stored Materials" means all materials, equipment, fixtures or articles of personal property purchased by Borrower to be placed or affixed in, on or to the Land or Improvements in connection with the construction of the Project which have not yet been incorporated in the Project.

(f) Lack of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement.

(g) Representations and Warranties. The representations and warranties in Section 9 and in the other Loan Documents shall be true and correct in all material respects as of the date of the Advance as though made as of that date, and, if required by Majority Owner, Majority Owner shall have received a certificate to that effect signed by Borrower.

(h) Date Down Endorsement. The title company that issued the Title Policy shall be prepared to issue a date down endorsement to the Title Policy insuring that the lien of the Deed of Trust is a first, prior and paramount lien against the Property and the Project securing all previous disbursements and the disbursement then being requested, and that nothing has intervened to affect the validity or priority of the Deed of Trust. If requested by Majority Owner, prior to Majority Owner's consent to the first Advance following the completion of each foundation for the Improvements, Majority Owner shall receive from the title company that issued the Title Policy, at Borrower's expense, a foundation endorsement to the Title Policy, showing no encroachments (and Borrower shall cause all conditions to the title company's issuance of the endorsement to be satisfied).

(i) No Stop Notice. No stop notice (whether bonded or not) shall have been serviced upon or otherwise delivered to Majority Owner in connection with the development of the Project or otherwise in connection with the Loan, unless Borrower shall have (a) paid and discharged the same, or (b) effected the release thereof by delivering to Majority Owner a surety bond complying with the requirements of applicable laws for such release.

(j) No Mechanics Liens. No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Property or any portion thereof, unless Borrower shall have (a) paid and discharged the same, or (b) effected the release thereof by delivering to Majority Owner a surety bond complying with the requirements of applicable laws for such release.

(k) Projected Cost Overruns. As of the date immediately prior to any requested Advance and after giving effect to the requested Advance, the Loan will be In-Balance under Section 15(o) and in Majority Owner's judgment Borrower should be able to finish the Project and pay for it without obtaining additional funds (other than any Capital Contributions designated as "Construction Sources" on Exhibit D).

(l) Advances for Developer Fee. Notwithstanding anything herein to the contrary, Majority Owner shall not be obligated to consent to Bond Trustee's advance any proceeds of the Loan (or make any disbursement of any amounts on deposit in the Borrower's Funds Account) for payment of or reimbursement for any portion of the developer fee payable to Borrower as shown on the Budget, so long as any default or Event of Default has occurred and remains uncured. In addition, payments for developer fee shall not be made from any source, exceed the amounts, or be made at any time except as set forth on Exhibit F attached hereto (the "**Permitted Developer Fee Payments**"). In addition, prior to the Conversion Date, no distribution of net operating income for the Project shall be made to Borrower, Guarantor, or

any partner or affiliate of Borrower or Guarantor for any purpose, other than (i) Permitted Developer Fee Payments in strict accordance with the Budget, (ii) asset management fees due to any limited partner under the Partnership Agreement, or (iii) management fees made in accordance with the terms and conditions set forth in the Assignment of Management Agreement and the Partnership Agreement (“**Permitted Management Fees**”). After the Conversion Date, no distributions of net operating income from the Project shall be made to Guarantor, or any partner or affiliate of Borrower or Guarantor during any period when the Debt Service Coverage Ratio (as defined in the Note) for the Project is less than 1.00 to 1.00. In the event the Debt Service Coverage Ratio is at least 1.00 to 1.00 for any calendar year period, distributions of net operating income from the Project (after payment of debt service and provided that all required reserves are fully funded) shall be permitted, but only to the extent that, on a pro forma basis, the Debt Service Coverage Ratio (as defined in the Note) for the calendar year period would have not been less than 1.00 to 1.00 had the amount of the then proposed distribution been treated as a reduction in the amount of operating income generated by the Project for purposes of determining net operating income for the same period.

(m) **Borrower’s Funds Account Deposits.** Borrower shall have made all deposits into the Borrower’s Funds Account required under Section 11(z) below or otherwise in this Agreement.

(n) **Special Condition to Second Advance.** Majority Owner shall not consent to any Advance other than the Initial Advance, unless and until the following condition precedent have been satisfied to Majority Owner’s satisfaction, in its sole and absolute discretion (“**Special Conditions**”):

(i) Borrower shall have furnished to Majority Owner copies of all grading, demolition and building permits and requisite approvals of any governmental body necessary for the construction and use of the Project (other than certificates of occupancy or similar permits that cannot be issued until the Project is complete); and

(ii) A copy of the final permit-ready set of Plans and Specifications stamped as approved by the City.

If all of the Special Conditions have not been satisfied by _____, 2019 (the “**Special Conditions Date**”), (1) the Loan shall immediately become due and payable in full, (2) this Agreement, the other Loan Documents shall automatically terminate, (3) the Guaranty shall terminate and be of no further force or effect, and (4) Lender shall have no obligations to make (and Majority Owner shall have no obligation to consent to) any further Advance of the Loan (the foregoing being referred to as the “**Loan Cancellation**”).

13. DISBURSEMENT OF LOAN PROCEEDS. The following provisions relate to the disbursement of funds from the Loan Funds:

(a) **Loan Disbursements.** The proceeds of the Bonds shall be disbursed by Bond Trustee only in accordance with a written requisition of Borrower in the form attached to the Indenture, approved in writing by Majority Owner, which approval shall be granted by

Majority Owner upon satisfaction or waiver by Majority Owner of the conditions set forth in Sections 11, 12 and 13 of this Agreement. No proceeds of the Bonds shall be disbursed after the initial Interim Construction Loan Maturity Date, unless an opinion of Bond Counsel is delivered, which opinion states that such disbursement will not adversely affect the exclusion of interest on the Bonds from the gross income of the holders of the Bonds.

(b) Application for Advances. Each requisition shall be executed by Borrower and supported by such evidence as Majority Owner shall reasonably require. Borrower shall apply only for disbursement with respect to work actually done in accordance with the Budget and for materials and equipment actually incorporated into the Project. Each requisition shall be deemed a certification of Borrower that as of the date of such requisition, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement. Only one Loan draw will be allowed each month unless otherwise agreed by Majority Owner.

(c) Payments. The proceeds of the Bonds and Borrower's Funds, when qualified for disbursement, shall be disbursed to or for the benefit or account of Borrower under the terms of this Agreement and the Indenture. At the sole option of Majority Owner, disbursements may be paid to the Borrower or in the joint names of Borrower and the contractor(s), subcontractor(s) or supplier(s) in payment of sums due under the Construction Contracts. At its sole option, Majority Owner may direct Bond Trustee to directly pay any contractor and any subcontractors or other parties the sums due under the Construction Contracts. Borrower appoints Bond Trustee, at the sole direction of Majority Owner, as its attorney-in-fact to make such payments. This power shall be deemed to be coupled with an interest, shall be irrevocable, and shall survive an Event of Default under this Agreement.

(d) Retainage. Notwithstanding any other provision of this Agreement to the contrary, Majority Owner may consent to the disbursement of up to ninety percent (90.00%) of all Advances to be paid with the disbursement of the remaining ten percent (10.00%) retention to be consented to by Majority Owner as the final payment to any contractor upon satisfaction of the conditions set forth for the final payment below in subsection (e).

(e) Final Payment. Upon completion of the Project and fulfillment of the Construction Contracts, to the satisfaction of Majority Owner, and provided sufficient Loan Funds are available, Majority Owner shall consent to an Advance of Loan to cover the final payment due upon delivery to Majority Owner of endorsements to the ALTA title insurance policy following the posting of the completion notice, as provided under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until Majority Owner shall have received all of the following:

(i) Evidence satisfactory to Majority Owner that all work under the Plans and Specifications requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, a notice of completion has been duly recorded in the Official Records of the County of San Diego, State of California, a final

certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;

(ii) A Certificate of Substantial Completion on Form AIA G704 or such other form as Majority Owner may reasonably require confirming that the Improvements have been completed in accordance with the Plans and Specifications in all material respects and in conformance with all applicable statutes, ordinances, codes, regulations, and similar requirements, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy;

(iii) Receipt by Majority Owner of a written report from the Project Inspector stating that it has conducted inspections of the Project and that all work has been fully completed in a good workmanlike manner and substantially in accordance with the Plans and the requirements of all Governmental Agencies in all material respects;

(iv) Evidence that the period for filing mechanic's liens has expired without the filing of any lien (or, if any such lien has been filed, evidence that such lien has been fully released of record);

(v) The title company which issued the Title Policy shall have delivered to Majority Owner for attachment to the Title Policy, as CLTA Form No. 101.2 Endorsement, in a form and substance reasonably satisfactory to Majority Owner;

(vi) Evidence of full payment for personal property in which Bond Trustee has a security interest; and

(vii) Form AIA G706/706A with final lien waivers attached or such other form reasonably required by Majority Owner or Title Company and written lien waivers releases from General Contractor and all suppliers of labor and materials to the Project.

(f) **Construction Default.** If an Event of Default occurs hereunder, Majority Owner, at its option, may refuse to consent to further Advances, may instruct Bond Trustee to accelerate the Indebtedness under the terms of the Note, and without thereby impairing any of its rights, powers, or privileges, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the Improvements, substantially in accordance with the Plans and Specifications.

(g) **Damage or Destruction; Condemnation.** Borrower shall give immediate notice to Majority Owner of any casualty or condemnation to any portion of the Property, and shall provide Majority Owner with copies of all documents in Borrower's possession which pertain to any such casualty or condemnation. If any of the Property or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall restore the Property and Improvements to the condition in which they were before such damage or destruction with funds other than those in the Project Fund. Majority Owner shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished. In the event that, notwithstanding the "lender's loss

payable endorsement” requirement set forth above, the proceeds of any casualty insurance policy described herein are paid to Borrower, Borrower shall deliver such proceeds to Majority Owner immediately upon receipt. Borrower hereby assigns to Majority Owner, as security for all obligations to Issuer secured by a lien on the Property, all amounts payable to Borrower in connection with any condemnation, and any proceeds of any related settlement (collectively, “**Compensation**”). Borrower shall deliver all Compensation to Majority Owner immediately upon receipt. The Compensation shall be applied in accordance with the terms of the Deed of Trust.

(h) Protection of Security. If Borrower fails to make any payment or to do any act as and in the manner provided in this Agreement or any of the other Loan Documents, Majority Owner, in its sole discretion, but without obligation so to do, without further notice or demand, and without releasing Borrower from any obligation, may make or do the same in such manner and to such extent as Majority Owner may reasonably deem necessary to protect the security of the Deed of Trust and the other Loan Documents. In connection therewith (without limiting its general powers), Majority Owner shall have the right, but not the obligation: (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which in the judgment of Majority Owner may be necessary or proper to keep the Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security of the Deed of Trust or the other Loan Documents or the rights or powers of Majority Owner; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of the Deed of Trust or the other Loan Documents or to be or to appear to be prior or superior hereto; and (v) in exercising such powers, to pay all costs and expenses and employ necessary or desirable consultants. In the event of any Event of Default or default hereunder or under any of the other Loan Documents, or in the event Majority Owner reasonably believes that any material adverse change has or may have occurred in the financial or other condition of Borrower or in the condition or operation of the Property, Majority Owner may, at Borrower’s sole cost and expense, reappraise (or have reappraised) the Property. Any such reappraisal may, at Majority Owner’s option, be prepared by an employee of Majority Owner or by a third-party appraiser. The selection of such appraiser shall be made by Majority Owner in the exercise of its sole and absolute discretion. Such appraiser shall have the right to enter upon and inspect the Property at all reasonable times and to inspect, copy and make abstracts of all of Borrower’s books and records relating to the Property. Borrower shall cooperate with such appraiser in order to permit such appraiser to prepare such appraisal. Neither Issuer, nor Majority Owner shall be liable for any act or omission of any such appraiser. Borrower shall reimburse Majority Owner immediately upon written demand for all costs and expenses incurred by Majority Owner (including, but not limited to, the reasonable fees and expenses of attorneys) in connection with the foregoing, including, without limitation, the following: (a) Majority Owner’s commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Loan Document, (b) all amounts expended by Majority Owner to continue or complete construction of any improvements now or hereafter located upon the Property, (c) all amounts expended by Majority Owner to protect and preserve the Property (or any part thereof) and the liens created under the Loan Documents, including, but not limited to, amounts expended by Majority Owner to pay or discharge liens or

encumbrances (including, but not limited to tax liens and, mechanic liens and judgement liens), regardless of whether the same are or are not superior to the lien of the Deed of Trust, and (d) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Majority Owner is indemnified under the Loan Documents. Such reimbursement obligations shall bear interest following written demand at the Default Rate, and shall be secured by the Deed of Trust and the other Loan Documents. Such reimbursement obligations shall survive the cancellation of the Note and the release and reconveyance of the Deed of Trust and the other Loan Documents.

14. LIMITATION OF RESPONSIBILITY. The making of any Advance or other disbursement by Majority Owner shall not constitute or be interpreted as either (a) an approval or acceptance by Majority Owner of the work done through the date of the Advance or other disbursement, or (b) a representation or indemnity by Majority Owner to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the Improvements, the workmanship and materials used in the Improvements, and the exercise of any other right of inspection, approval, or inquiry granted to Majority Owner in this Agreement are acknowledged to be solely for the protection of Majority Owner’s and Issuer’s interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on Majority Owner to any party. Neither Borrower, nor any contractor, subcontractor, materialman, laborer, nor any other person shall rely, or have any right to rely, upon Majority Owner’s determination of the appropriateness of any Advance. No disbursement or approval by Majority Owner shall constitute a representation by Majority Owner as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by Majority Owner to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

15. AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Issuer, Bond Trustee and Majority Owner that, while this Agreement is in effect, Borrower will:

(a) **Accounts and Records.** Maintain a standard modern system of accounting administered in accordance with generally accepted accounting principles. Majority Owner shall have the right to examine the books of account of Borrower to the extent that they pertain to this Agreement and the Property, and to discuss the affairs, finances, and accounts of Borrower to such extent, all at such reasonable times upon advance written notice and intervals as Majority Owner may reasonably request. Borrower will furnish to Majority Owner the following:

Reporting Party	Report/Document	Required Delivery Date
1. Borrower	Annual audited financial statements prepared in accordance with GAAP (prepared and certified by an accounting firm reasonably acceptable to Majority Owner)	Within 120 days of fiscal year end commencing with fiscal year ending December 31, 2019 for the term of the Loan

2. Borrower	Annual in-house prepared operating statement and rent roll for Project, together with annual balance sheets and profit and loss statements which show total rents received and total expenses for the Project	Within 90 days of calendar year end commencing with the fiscal year ending December 31, 2020, and thereafter for the term of the Loan
3. Borrower	Monthly in-house prepared operating statement and rent roll for Project	Within 30 days of the end of each month, commencing with the month in which the temporary certificate of occupancy for the Project is received and thereafter each month through the Conversion Date
4. Borrower	Quarterly in-house prepared operating statement and rent roll for Project	Within 25 days of the end of each calendar quarter, commencing with the calendar quarter in which the Conversion Date occurs and thereafter through the term of the Loan
5. Borrower	If requested by Majority Owner, copies of annual tax returns and related statements	Within 30 days of filing but no later than November 15 of each calendar year

Additionally, Borrower shall furnish to Majority Owner from time to time and within thirty (30) days following Majority Owner's request therefor, all such financial information as may be necessary or appropriate for Majority Owner's determination of Borrower's net operating income and debt service with all such financial information being prepared and certified as accurate by Borrower. If Borrower fails to provide the foregoing reports and financial statements within twenty (20) days of a request from Majority Owner, Majority Owner may have Borrower's books and records audited at Borrower's expense. Borrower shall cause Guarantor to deliver all financial reports required under the Guaranty.

(b) Additional Assurances. Make, execute, and deliver to Majority Owner such Security Agreements, instruments, documents, and other agreements reasonably necessary to document and secure the Loan and to perfect Issuer's Security Interests in the Property and Improvements; provided, however, that no such instruments, agreements and documents or actions shall increase Borrower's or Guarantor's obligations or liabilities under the Loan Documents.

(c) Additional Information. Furnish such additional information and statements, lists of assets and liabilities, aging of receivables and payables, inventory schedules,

budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Majority Owner may reasonably request from time to time.

(d) Compliance with Bond Documents. Fully and timely comply in all material respects with all covenants, agreements, and terms of the Bond Documents.

(e) Compliance with Regulatory Agreements. Fully and timely comply in all material respects with all covenants, agreements, and terms of the Regulatory Agreements and to not cause a default thereunder which is not cured within any applicable cure period expressly set forth therein. Borrower shall at all times during the Loan term rent the apartment units in the Project to tenants in accordance with the unit rental covenants set forth in the Regulatory Agreements and all existing and future amendments thereto. Borrower shall submit annual documentation to Majority Owner in the forms required by the applicable regulating agency that the Project meets or exceeds the affordability standards established in accordance with unit rental covenants set forth in the Regulatory Agreements.

(f) Compliance with Subordinate Financings. Fully and timely comply in all material respects with all covenants, agreements, and terms of the Subordinate Financings.

(g) Construction of the Project. Commence construction (which shall include commencement of grading or demolition) of the Project no later than thirty (30) days after closing of the Loan, and cause the Improvements to be fully constructed in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by Majority Owner, the Budget, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners, and be completed to the satisfaction of Majority Owner no later than _____ (the "**Completion Date**"). Borrower agrees that construction work on the Project shall not commence until the final Plans and Specifications, the Budget, and the contract with the General Contractor have been reviewed and approved by a third party reviewer/inspector acceptable to Majority Owner, and accepted by Majority Owner.

(h) Defects. Upon demand of Majority Owner, promptly correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Majority Owner before further work shall be done upon the portion of the Improvements affected.

(i) Guaranties. Prior to disbursement of any Loan proceeds, furnish the executed Guaranty of the Loan executed by Guarantor in favor of Issuer in the form and substance required by Majority Owner in its sole discretion.

(j) Litigation. Promptly inform Majority Owner in writing of (a) all material adverse changes in Borrower's or Guarantor's financial condition, and (b) all litigation and claims and all threatened litigation and claims affecting Borrower, any Guarantor or the Property which could materially affect the financial condition of Borrower, any Guarantor or the Property.

(k) Loan Proceeds. Use the Loan Funds solely for payment or reimbursement of bills and expenses directly related to the Project.

(l) Management of the Project. If requested by Majority Owner as a result of an Event of Default, contract with a Property manager acceptable to Majority Owner to provide professional management services for the Project on terms acceptable to Majority Owner. All such Property managers shall consent to the assignment of rights under the contract to Majority Owner and will not terminate or amend the same without Majority Owner's consent.

(m) Manager Replacement. If, in Majority Owner's reasonable opinion, the Project is being mismanaged, Borrower shall, at Majority Owner's request, enter into a new management contract (in form acceptable to Majority Owner) with a professional management firm (which may be Borrower) for the maintenance and repair of the Property, the collection of rents, the payment of Property expenses, and such other provisions as Majority Owner may require, including a minimum cancellation notice to Borrower of sixty (60) days and a consent to assignment from the new manager to Majority Owner on terms acceptable to Majority Owner.

(n) Operating Accounts. Borrower shall at all times while any portion of the Note remains unpaid, maintain all of the Project's operating accounts (the "Operating Account"), tenant deposit accounts ("Security Deposit Account"), following the Conversion Date, the Replacement Reserve Account and the Operating Reserve Account, in each case with Majority Owner, unless the same is contrary to federal or state law or regulation.

(o) Loan "In-Balance".

(i) Notwithstanding anything in this Agreement or the Loan Documents to the contrary, Borrower shall at all times cause the Loan to be In Balance, and Majority Owner shall have no obligation to consent to any Advance of Loan Funds or perform any other act unless and until the Loan is In Balance. The Loan shall be deemed to be "In Balance" only when the maximum principal amount of the Loan, less the sum of the funded Advances, plus the undisbursed amount on deposit in the Project Fund (if any) plus the sum of the undisbursed portion of the Capital Contributions if and to the extent they are indicated as "Construction Source" on Exhibit D, shall equal or exceed the amount reasonably estimated by Majority Owner to pay for all work done or to be done and all materials furnished and to be furnished for the completion of the Project in each category of cost referred to in the Budget and to pay interest on the Loan and all other costs to be paid by Borrower in connection with the Project.

(ii) If at any time and for any reason the Loan is not In Balance in accordance with this Section, Borrower shall, within five (5) days of receiving written or verbal notice from Majority Owner, do one or more of the following:

(a) provide satisfactory evidence to Majority Owner that Borrower has previously paid any excess or additional costs for the Project

(collectively, the “**Excess Costs**”) or otherwise provided for the insufficiency with funds from a source other than the Loan, Subordinate Loans, or Capital Contributions; or

(b) reallocate, subject to Majority Owner’s approval, sufficient funds to pay the Excess Costs from funds allocated to “Contingency” in the Budget; or

(c) deposit an amount equal to the Excess Costs in an interest-bearing deposit account (the “**Borrower’s Funds Account**”) with Majority Owner. Borrower shall have no right to make withdrawals from the Borrower’s Funds Account. Majority Owner’s disbursement of funds from the Borrower’s Funds Account shall be granted (or withheld) subject to the same conditions precedent and other terms applicable to disbursements of Loan proceeds.

Majority Owner shall have no obligation to consent to further Advances until Borrower has paid or otherwise provided for the Excess Costs as required above. Amounts deposited by Borrower in the Borrower’s Funds Account for any line item shall be disbursed by Majority Owner in accordance with subsection (q), below. As additional security for all of Borrower’s obligations under the Loan Documents, Borrower hereby pledges to Majority Owner, and grants to Majority Owner a security interest in, the Borrower’s Funds Account, all amounts now or hereafter on deposit in the Borrower’s Funds Account, all interest and other earnings on the Borrower’s Funds Account, if any, all additions, increases, modifications, renewals, rollovers, substitutions and replacements to and/or for the foregoing collateral, and all proceeds and products of the foregoing collateral, whether voluntary or involuntary. Funds on deposit from time to time in the Borrower’s Funds Account are sometimes referred to in this Agreement as “Borrower’s Funds.”

(p) **Operating Reserve.** On or before the Conversion Date, Borrower shall have established and funded an operating reserve (the “**Operating Reserve**”) in the minimum amount of the greater of \$_____ or any such greater amount required pursuant to the terms of any City Loan Document or the Partnership Agreement, which shall be additional collateral for the Loan during the entire term of the Loan, as follows:

(i) The Operating Reserve shall be maintained by Majority Owner in one or more interest-bearing account(s) in Borrower’s name with Majority Owner (“**Operating Reserve Account(s)**”). Any interest earned on the Operating Reserve shall be added to and shall become a part of the Operating Reserve. Banner shall not be required to limit the amount deposited with any single institution to the FDIC insurance limits in effect from time to time.

(ii) Borrower shall be entitled to use the Operating Reserve funds only to meet operating deficits for below break-even operations in connection with the management and/or maintenance of the Property. If Borrower shall at any time draw upon the Operating Reserve to pay such operating deficits, then Borrower shall promptly replenish the Operating Reserve to the amount of the balance of the Operating Reserve at the time of Borrower’s draw from available cash flow from the Property, and the replenishment of the

Operating Reserve shall be paid prior to the payment of any partnership or developer fees (excluding asset management fees from cash flow due to Investor Limited Partner under the terms of the Partnership Agreement which may be paid prior to replenishment).

(iii) All of Borrower's interest in the Operating Reserve and Operating Reserve Account(s), any interest accrued or accruing thereon, and the Operating Reserve Account(s) in which those funds are held, are hereby pledged to Majority Owner as collateral or security for the Loan pursuant to documentation required by (and acceptable to) Majority Owner. During any time that the Operating Reserve Account(s) is being held and maintained by Borrower, such account(s) shall provide expressly that Borrower shall make no withdrawals therefrom without Banner's prior written consent. Borrower shall execute any documents required to perfect or maintain Majority Owner's security interest in the Operating Reserve and Operating Reserve Account(s). If an Event of Default shall occur and be continuing, Majority Owner shall be entitled to draw upon and utilize all or any portion of the Operating Reserve and Operating Reserve Account(s) as otherwise provided in the Loan Documents.

(iv) Initially, the Operating Reserve shall be audited by Majority Owner or its delegee six (6) months following the Conversion Date, and the Operating Reserve shall be audited by Banner or its delegee annually thereafter in order to confirm, among other things, that (i) Borrower has used Operating Reserve funds only for appropriate purposes, and (ii) the Operating Reserve contains no less than \$_____. Borrower shall cooperate with Majority Owner's audits of the Operating Reserve.

(v) To the extent that the Partnership Agreement or City Loan Documents require the prior consent of Investor Limited Partner or City, respectively, to any withdrawal from the Operating Reserve Account(s), Borrower shall obtain Limited Partner's and/or City's consent thereto and shall have delivered evidence of such consent to Majority Owner prior to any withdrawal from the Operating Reserve Account(s).

(q) **Borrower's Funds Account.** Borrower shall deposit into the Borrower's Funds Account (a) all amounts required to be deposited into the Borrower's Funds Account pursuant to Section 11(y) of this Agreement and subsection (o), above. All amounts deposited in the Borrower's Funds Account shall be disbursed by Majority Owner solely to pay Project costs on the same terms, and subject to the same conditions that are required for Advances of Loan proceeds. Notwithstanding anything to the contrary set forth above or otherwise herein, no amounts deposited in the Borrower's Funds Account shall be available for disbursement to Borrower unless and until the Special Conditions are satisfied in full (as determined by Lender in its sole and absolute discretion) on or before the Special Conditions Date. In addition, all amounts deposited into the Borrower's Funds Account shall be disbursed by Majority Owner prior to the disbursement of Loan proceeds. The funds on deposit in the Borrower's Funds Account are referred to herein as "Borrower's Funds".

(r) **Construction Disbursement Account.** Borrower shall maintain with Majority Owner the Construction Disbursement Account for deposit by Bond Trustee of

proceeds of the Loan and disbursement by Majority Owner of Borrower's Funds as required to fund a pending request for Advance.

(s) Payment of Claims and Removal of Liens. (a) Cause all claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (b) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (c) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (d) take all reasonable steps necessary to remove all claims of liens against the Property, the Improvements or any part of the Property or Improvements, or any rights or interests appurtenant to the Property or Improvements. Borrower shall, within ten (10) business days after the filing of any claim of lien that is disputed or contested by Borrower, provide Majority Owner with a surety bond issued by a surety acceptable to Majority Owner sufficient to release the claim of lien or deposit with Majority Owner an amount satisfactory to Majority Owner for the possibility that the contest will be unsuccessful. If Borrower fails to remove any lien on the Property or Improvements or provide a bond or deposit pursuant to this provision, Majority Owner may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Majority Owner's reasonable attorneys' fees.

(t) Performance. Perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements related to the Project between Borrower and Majority Owner, and in all other loan agreements related to the Project now or hereafter existing between Borrower and any other party. Borrower shall notify Majority Owner immediately in writing of any default in connection with any agreement.

(u) Project Claims and Litigation. Promptly inform Majority Owner, but only to the extent the Borrower has actual knowledge and only prior to the satisfaction of all conditions to the final Advance, of (a) all material adverse changes in the financial condition of the General Contractor; (b) any litigation and claims, actual or threatened, affecting the Project or any contractor, which could materially affect the successful completion of the Project or the ability of any contractor to complete the Project as agreed; and (c) any condition or event which constitutes a breach or default under any of the Loan Documents or any contract related to the Project.

(v) Replacement Reserve. Following the Conversion Date, and commencing on each date that a regularly scheduled payment of principal and interest is due under the Note, Borrower shall deposit into an account held by Majority Owner (the "**Replacement Reserve Account**") a monthly deposit of at least \$_____ (each, a "**Monthly Deposit**"), which amount shall increase by three percent (3%) annually and shall be governed by the Replacement Reserve and Security Agreement ("**Reserve Agreement**") executed in connection herewith.

(w) Tax Credits. Borrower hereby agrees:

(i) To observe and perform all obligations imposed on Borrower in connection with the Tax Credits and to operate the residential units of the Project or to use Borrower's best efforts to cause the appropriate parties to operate the same in accordance with all statutes and regulations governing the Tax Credits;

(ii) Not to release, forego, alter, amend or modify its rights to the Tax Credits (excluding decreases in the Tax Credits resulting from a reduction in the eligible basis for the Project as a result of cost savings on the Project) without Majority Owner's prior written consent, which Majority Owner may give or withhold in Majority Owner's reasonable discretion; provided however, no consent of Majority Owner shall be required in connection with an increase in the Tax Credits;

(iii) Not to execute any residential lease of all or any portion of the Project Assets not complying fully with all requirements and regulations governing the Tax Credits, except with Majority Owner's prior written consent, which Majority Owner may give or withhold in its sole and absolute discretion;

(iv) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project;

(v) To comply with the appropriate minimum low-income set-aside requirements under the Code, or applicable federal regulations ("**Federal Laws**"), TCAC and all California laws and regulations ("**State Laws**") applicable to the creation, maintenance and continued availability of the Tax Credits;

(vi) To certify compliance with the set-aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws, TCAC or State Laws for such Tax Credits;

(vii) To set aside the appropriate number of units for households with incomes meeting the required standards of San Diego County, California median income to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code, and/or State Laws), adjusted for family size, and to operate and maintain all such units as "low-income units" qualifying for the Tax Credits under Section 42(i)(3) of the Code, and/or State Laws;

(viii) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirement of Federal Laws and State Laws; and

(ix) To promptly deliver to Majority Owner true and correct copies of all notices or other documents or communications received or given by Borrower with regard to or relating in any way to the partnership interests of Borrower and/or the Tax Credits.

Immediately upon receipt thereof, Borrower must deliver to Majority Owner the following: (i) a copy of the final reservation of Tax Credits for the Project Assets; (ii) the basis audit (as required by Section 42 of the Code) for the Property (including a certificate of Borrower's accountant or attorneys if requested by Majority Owner); (iii) the first annual income certification for all tenants of the Property showing that the tenants are qualified for purposes of Borrower's obtaining Tax Credits; and (iv) the fully-completed Form 8609 (required by the Code) issued for the Project Assets. Borrower must deliver promptly to Majority Owner such other certificates, income certificates, reports, and information as Majority Owner may request.

(x) Taxes and Claims. Pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Property or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (a) its legality shall be contested in good faith by appropriate proceedings, (b) the indebtedness, obligation, or claim does not become a lien or charge upon the Property or Improvements, and (c) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with generally accepted accounting practices. If the indebtedness, obligation, or claim does become a lien or charge upon the Property or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

(y) Workers' Compensation Coverage. Provide to Majority Owner proof of compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

(z) Covenant for the Benefit of the Owners. Borrower recognizes the authority of the Issuer to assign its interest in and pledge moneys receivable under this Agreement to the Bond Trustee as security for the payment of the principal of and interest and redemption premiums, if any, on the Bonds, and the payment of all other amounts as set forth in Section 4, 5 and 25(k) of this Agreement. Borrower hereby (i) agrees to be bound by the Issuer's grant of such assignment and pledge, (ii) grants to the Bond Trustee a security interest in any right and interest Borrower may have in sums held in the Funds described in Article V of the Indenture, to secure the obligations of Borrower under this Agreement and the other Loan Documents and (iii) agrees that the Bond Trustee shall have all of the rights of a secured party under the California Uniform Commercial Code in connection with such security interest. Each of the terms and provisions of this Agreement is a covenant for the use and benefit of the Owners and Majority Owner, so long as the Bonds shall remain Outstanding; but upon payment in full of the Bonds in accordance with the Indenture and of all fees and charges requested under Sections 4, 5 and 25(k) of this Agreement, all references in this Agreement to Majority Owner, the Bonds, the Bond Trustee and the Owners shall be ineffective, and the Owners, the Bond Trustee and Majority Owner shall thereafter have no rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Agreement. All rights and benefits provided to Majority Owner pursuant to this Agreement are provided to Majority Owner in both its capacity as owner of the Bonds and its capacity as "Majority Owner" (*i.e.*, representative of the Owners) as that capacity is established and defined pursuant to the Indenture, and shall extend to each successive Owner and "Majority Owner" under the Indenture.

16. NEGATIVE COVENANTS. Borrower covenants and agrees with Issuer, Bond Trustee and Majority Owner that while this Agreement is in effect, Borrower shall not, without the prior written consent of Majority Owner:

(a) **Continuity of Operations.** Cease operations with regard to the Property.

(b) **Indebtedness and Liens.** Except for the Subordinate Financing and the Regulatory Agreements, sell, transfer, mortgage, assign, pledge, grant a security interest in, or encumber the Property.

(c) **Modification of Regulatory Agreements.** Make or permit to be made any modification of the Regulatory Agreements, except to the extent necessary to comply with rules and regulations under the Code.

17. TAX COVENANTS. The Borrower shall comply with the requirements and conditions of the Tax Certificate and the Bond Regulatory Agreement. Without limiting the foregoing and notwithstanding anything to the contrary in this Agreement, Borrower will not take, or permit to be taken on its behalf, any action which would cause interest on the Bonds to be included in gross income for federal income tax purposes and will take such reasonable action as may be necessary to continue such exclusion from gross income, including:

(a) Borrower will not use the proceeds of the Bonds, or any other funds which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code, in the manner which will cause the Bonds to be an “arbitrage bond” within the meaning of such section, and will comply with the requirements of such Section throughout the term of the Bonds;

(b) Borrower will prepare and file any statements required to be filed by it in order to maintain such exclusion;

(c) Borrower will pay to the United States any amount required to be paid by the Issuer or Borrower pursuant to Section 148(f) of the Code, at the times, in the amounts and at the places required in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, and Borrower shall compute, or cause to be computed, such amounts annually so long as required by the Code.

(d) not less than ninety five percent (95%) of the net proceeds of the Bonds (within the meaning of Section 142(a) of the Code) shall be used to pay Qualified Project Costs;

(e) in order to satisfy the requirements set forth in subpart (4) of the definition of “program investment” that appears in Section 1.148-1(b) of the Treasury Regulations (which requirements must be met in order for the Loan to qualify as a program investment within the meaning of that section), neither the Borrower nor any related person will purchase any interest in the Bonds in amount related to the amount of the Loan;

(f) no changes will be made to the Project, no actions will be taken by Borrower, and Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the interest on the Bonds;

(g) if Borrower becomes aware of any circumstance, event or condition which would result in the interest payable on the Bonds becoming includable in gross income for federal income tax purposes, Borrower will promptly give written notice of such circumstance, event or condition to the Issuer and Majority Owner;

(h) the full amount of each disbursement from the Loan will be applied to pay or to reimburse Borrower for the payment of Project Costs and, after taking into account any proposed disbursement, (i) at least ninety five percent (95%) of the net proceeds of the Bonds (as defined in Section 150 of the Code) will be used to pay Qualified Project Costs to provide a qualified residential rental project (as defined in Section 142(d) of the Code), (ii) less than twenty-five percent (25%) of the net proceeds of the Bonds will have been disbursed to pay or to reimburse Borrower for the cost of acquiring land, (iii) not more than two percent (2%) of the proceeds of the Bonds will have been used for Costs of Issuance (as defined in the Bond Regulatory Agreement), and (iv) none of the proceeds of the Bonds (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(i) Borrower will cause all of the residential units in the Project first occupied after the Closing Date and to be rented or available for rental on a basis which satisfies the requirements of the Law, the Act, the Code and the Bond Regulatory Agreement;

(j) all leases for the Project entered into after the Closing Date will comply with all applicable laws and the Bond Regulatory Agreement;

(k) in connection with any lease entered into after the Closing Date or grant by Borrower of the use of the Project, Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Agreement or the Bond Regulatory Agreement;

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

(m) Borrower shall, prior to the date which is 24 months after the Closing Date (subject to extension as permitted by the Regulatory Agreement), expend proceeds of the Bonds equal to not less than 15% of the amount of Bond proceeds expended to acquire the Project (exclusive of any acquisition costs attributable to land) on Qualified Rehabilitation Expenditures (as defined in the Bond Regulatory Agreement) which expenditures shall be confirmed in writing through a Certificate of Completion delivered to the Issuer and the Trustee

not later than 25 months (subject to extension as permitted by the Bond Regulatory Agreement) after the Closing Date.

In any matter relating to the exclusion of interest on the Bonds from gross income for federal income tax purposes, the terms and provisions of the Tax Certificate shall control in the event of any conflict between this Agreement and the Tax Certificate.

18. GENERAL PROJECT PROVISIONS. The following provisions relate to the construction and completion of the Project:

(a) Change Orders. All requests for changes in the Plans and Specifications or change orders to the Construction Contract, other than minor changes involving costs of not more than \$25,000.00 for any individual change order and not more than \$150,000.00 for all changes orders in the aggregate, must be in writing, signed by Borrower, and delivered to Majority Owner for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Majority Owner (except for such items noted above as not needing Majority Owner's approval). To the extent required by the applicable governmental authorities having jurisdiction, Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

(b) Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by Majority Owner in writing.

(c) Majority Owner's Right of Entry and Inspection. Subject to the rights of tenants under their respective leases and upon reasonable advance notice, Majority Owner and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Majority Owner shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project. Borrower agrees to pay on demand all of Majority Owner's out-of-pocket expenses for periodic inspections, reviews, or reports that Majority Owner, in its sole discretion, deems necessary and appropriate for disbursement of the Loan Fund.

(d) Majority Owner's Right to Stop Work. If Majority Owner in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Majority Owner may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower will promptly correct the work to Majority Owner's satisfaction. No such action by Majority Owner will affect

Borrower's obligation to complete the Improvements on or before the Completion Date. Majority Owner is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Majority Owner is for the sole purpose of protecting Majority Owner's security and preserving Majority Owner's rights under this Agreement. No default of Borrower will be waived by any inspection by Majority Owner. In no event will any inspection by Majority Owner be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

(e) INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS ISSUER, BOND TRUSTEE AND MAJORITY OWNER, THEIR GOVERNING BODIES, DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) WHICH ISSUER OR MAJORITY OWNER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF: (a) THE PURPOSE TO WHICH BORROWER APPLIES THE PROCEEDS OF THE BOND; (b) THE FAILURE OF BORROWER TO PERFORM ANY OBLIGATIONS AS AND WHEN REQUIRED BY THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; (c) ANY FAILURE AT ANY TIME OF ANY OF BORROWER'S REPRESENTATIONS OR WARRANTIES TO BE TRUE AND CORRECT; OR (d) ANY ACT OR OMISSION BY BORROWER, CONSTITUENT PARTNER OF BORROWER, ANY CONTRACTOR, SUBCONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON OR ENTITY WITH RESPECT TO ANY OF THE PROPERTY OR IMPROVEMENTS, PROVIDED, HOWEVER THAT BORROWER WILL NOT BE REQUIRED TO (A) INDEMNIFY ISSUER FOR LIABILITIES ARISING DUE TO ISSUER'S WILLFUL MISCONDUCT OR (B) INDEMNIFY MAJORITY OWNER OR BOND TRUSTEE FOR LIABILITIES ARISING FROM MAJORITY OWNER'S OR BOND TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, RESPECTIVELY. BORROWER SHALL IMMEDIATELY PAY TO ISSUER, MAJORITY OWNER AND BOND TRUSTEE UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS ISSUER, MAJORITY OWNER AND BOND TRUSTEE SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Agreement or the Bond Regulatory Agreement, Borrower shall remain obligated to indemnify the Issuer, Majority Owner and Bond Trustee pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Issuer, Majority Owner and Bond Trustee have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder, or the Issuer, Majority

Owner and Bond Trustee, in such case, shall have executed a full and unconditional release of Borrower.

The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or defeasance of the Bond and in the case of the Trustee or Majority Owner, as applicable, any resignation or removal. The provisions of this Section shall survive the termination of this Agreement, payment of the Bond and discharge of the Indenture.

(f) Publicity. Majority Owner may display a sign at the construction site subject to applicable zoning and similar ordinances informing the public that Majority Owner is the construction lender for the Project. During construction, any sign placed on the Property describing sources of funding for the Project will specify Majority Owner as providing construction financing. Majority Owner may obtain other publicity in connection with the Project through press releases, including a description of the Property, Project, occupancy and rentals, and participation in ground-breaking and opening ceremonies and similar events, provided that Majority Owner shall not use any photographs or videos of any residents without prior written authorization from the resident.

(g) Actions. Majority Owner shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the Advance of Loan proceeds or disburse funds from the Borrower's Funds Account. In connection with this right, Majority Owner may incur and pay reasonable costs and expenses, including, but not limited to, attorneys' fees, for both trial and appellate proceedings. Borrower covenants to pay to Majority Owner on demand all such expenses, together with interest from the date Majority Owner incurs the expense at the rate specified in the Note, and Majority Owner is authorized to disburse funds from the Loan Fund for such purposes.

(h) Permits. To the extent not delivered to Majority Owner at Closing, prior to any construction work on or use of the Project, Borrower shall have furnished to Majority Owner copies of all permits and requisite approvals of any governmental body necessary for such construction and/or use, as applicable, of the Project.

19. RIGHT OF SETOFF. Borrower grants to Majority Owner a contractual possessory security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Majority Owner all Borrower's right, title and interest in and to, Borrower's accounts with Majority Owner (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all Keogh, and trust accounts. Borrower authorizes Majority Owner, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

20. EVENTS OF DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

(a) Default on Indebtedness. (i) Borrower fails to make any payment of principal and/or interest under the Note which is due on the Interim Construction Maturity Date or the Term Loan Maturity Date on such due date, or Borrower fails to make any other payment of principal and/or interest under the Note within five (5) days after due.

(b) Other Monetary Default. Borrower fails to perform any other obligation for the payment of money under this Agreement or any other Related Document executed by Borrower within 10 days after Majority Owner gives Borrower written notice that such obligation was not performed.

(c) Default under Regulatory Agreements. Failure of Borrower to comply with or perform when due any term, obligation, covenant, or condition contained in the Regulatory Agreements and failure to cure the same within any cure period specified therein.

(d) Default under Subordinate Loan Documents. Failure of Borrower to comply with or perform when due any term, obligation, covenant, or condition contained in the Subordinate Loan Documents and failure to cure the same within any cure period specified therein or the Subordinate Loan Documents are amended, modified or supplemented or terminated without Majority Owner's express prior written consent.

(e) Loss of Tax-Exempt Status of the Bonds. Failure of the interest accruing on the Bonds at any time and for any reason to be excluded from federal income tax pursuant to Section 103 of the IRS Code (excluding any period during which the Bonds are held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code).

(f) Compliance Default. Failure of Borrower or Guarantor to comply with any other term, obligation, covenant or condition contained in this Agreement, the Note or in any of the Loan Documents or the failure of Borrower to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Majority Owner and Borrower within the cure period expressly set forth in the applicable document. If such a non-payment default is curable and if Borrower or Guarantor, as applicable, has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Borrower, after Majority Owner sends written notice demanding cure of such failure: (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance within ninety (90) days after notice is sent.

(g) Breaches. Any warranty, representation, or statement made or furnished to Majority Owner by or on behalf of Borrower, any Grantor, or any Guarantor under this Agreement or the is, or at the time made or furnished was, false in any material respect.

(h) Insolvency. The insolvency of Borrower or General Partner or, prior to the Conversion Date, Investor Limited Partner or any Guarantor; appointment of a receiver for

any part of Borrower's or General Partner's or, prior to the Conversion Date, Investor Limited Partner's or any Guarantor's property; any assignment for the benefit of creditors; the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or General Partner or, prior to the Conversion Date, Investor Limited Partner or any Guarantor; provided, however, that Borrower shall have thirty (30) in which to obtain a dismissal of any such proceedings; or the dissolution or termination of Borrower's or General Partner's or, prior to the Conversion Date, Investor Limited Partner's or Guarantor's existence as a going business.

(i) Creditor Proceedings. Commencement of foreclosure, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or any creditor of any Grantor against any collateral securing the Indebtedness. This includes a garnishment, attachment, or levy on or of any of Borrower's deposit accounts with Majority Owner. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor, as the case may be, as to the validity or reasonableness of the claim which is the basis of the creditor proceeding, and if Borrower or Grantor gives Majority Owner written notice of the creditor proceeding and furnishes reserves or a surety bond for the creditor proceeding satisfactory to Majority Owner.

(j) Defective Collateralization. This Agreement, the Security Instrument, Bonds or any of the Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason and the Agreement is not reinstated (or the security interest or lien is not perfected) within ten (10) days of notice thereof by Majority Owner to Borrower.

(k) Events Affecting Guarantor. Any Guarantor seeks, claims, or otherwise attempts to limit, modify, or revoke the Guaranty.

(l) Adverse Change. A material adverse change occurs in Borrower's financial condition which reasonably causes Majority Owner to believe the prospect of payment or performance of the Indebtedness is impaired or, prior to the Conversion Date, a material adverse change occurs in Guarantor's financial condition which reasonably causes Majority Owner to believe Guarantor's ability to perform under the Guaranty is impaired.

(m) Non-Conformance with Plans and Specifications. The Improvements are not constructed in accordance with the Plans and Specifications in all material respects.

(n) Cessation of Construction. Prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than fifteen (15) consecutive days for any reason other than governmental orders, decrees and regulations, acts of God, strikes or other causes beyond Borrower's reasonable control, provided the same do not, in the aggregate and in Majority Owner's reasonable judgment threaten to delay the completion of the Project beyond the required Completion Date set forth in this Agreement, or the Improvements are not completed for purposes of final payment prior to the Completion Date, regardless of the reason for the delay.

(o) **Transfer of Property.** Except for a Permitted Transfer, the sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Grantor without Majority Owner's prior written consent.

(p) **Condemnation.** All or any material portion of the Property is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

(q) **Casualty.** The Property is materially damaged or destroyed by fire or other casualty unless Borrower restores the Property in accordance with Section 13(g) of this Agreement and the terms and conditions set forth in the Deed of Trust.

(r) **Injunction.** Borrower is enjoined or otherwise prohibited by any governmental agency from construction and/or occupying the Improvements and such injunction or prohibition continues unstayed for thirty (30) days or more for any reason.

(s) **Amendments or Defaults.** Any Bond Document or any Subordinate Loan Document is amended, modified or terminated without Majority Owner's prior written consent; or a default occurs under any Bond Document or Subordinate Loan Document, which default is not cured within any applicable cure period expressly set forth therein.

(t) **Equity Capital Contributions.** Any Equity Capital Contribution shown on Exhibit D is not made on the date such Equity Capital Contribution is scheduled to be made as shown on Exhibit D.

(u) **Borrower's Funds Account Deposit.** Borrower fails to make any required deposit into the Borrower's Funds Account on the date such deposit is due under the terms of this Agreement; or

(v) **Special Conditions.** The Borrower fails to satisfy all Special Conditions, as determined by Majority Owner in its sole and absolute discretion, on or before the Special Conditions Date.

(w) **Other Default.** Any "Event of Default" occurs under any Loan Document.

21. EFFECT OF AN EVENT OF DEFAULT; REMEDIES. Upon the occurrence of any Event of Default and at any time thereafter, Majority Owner may, at its option, but without any obligation to do so, and in addition to any other right Issuer, Bond Trustee or Majority Owner may have, do any one or more of the following without notice to Borrower: (a) cancel this Agreement; (b) institute appropriate proceedings to enforce the performance of this Agreement; (c) withhold its consent to further Advance of Loan funds; (d) expend funds necessary to remedy the default; (e) take possession of the Property and continue construction of the Project; (f) direct Bond Trustee to accelerate maturity of the Note

and/or Indebtedness and demand payment of all sums due under the Note and/or Indebtedness; (g) bring an action on the Note and/or Indebtedness (or direct Bond Trustee to do so); (h) foreclose the Deed of Trust on the Property in any manner available under law (or direct Bond Trustee to do so); and (i) exercise any other right or remedy which it has under the Note or , or which is otherwise available at law or in equity or by statute.

22. NONRECOURSE AFTER CONVERSION DATE. Notwithstanding the foregoing or anything else in the Loan Documents to the contrary, except as otherwise expressly provided below, from and after the Conversion Date, Borrower's obligations under this Agreement and the other Loan Documents shall be secured solely by the real and personal property pledged or encumbered under the Deed of Trust and the other Loan Documents, and, subject to the recourse provisions of the Note and the recourse provisions of the Guaranty, no recourse under the Loan Documents shall be had against any of Borrower's assets not so pledged or encumbered or against any of Borrower's partners or their affiliates or any officer, director, commissioner, partner, member or employee of any such partner or affiliate. Notwithstanding the foregoing, (A) Borrower shall be fully and personally liable to Issuer, Bond Trustee and Majority Owner for all indebtedness and other obligations of Borrower under this Agreement, the Note and the other if any of the following occurs: (i) except for a Permitted Transfer, the sale, assignment, encumbrance, or other transfer of the Property, or more than twenty-five percent (25%) of the ownership interests in Borrower, without Majority Owner's prior written consent (in its sole and absolute discretion); or (ii) the encumbrance of the Property by any senior or subordinate deed of trust or other instrument in connection with any financing by Borrower, without Majority Owner's prior written consent (in its sole and absolute discretion) , or (iii) the violation by Borrower of any single asset covenant set forth in this Agreement, the Note or the Loan Documents; and (B) Borrower shall be personally liable to Majority Owner for the full amount of Issuer's, Bond Trustee's, or Majority Owner's loss, damage or cost resulting from (a) fraud or intentional misrepresentation by Borrower or any Guarantor in connection with obtaining the Loan represented by the Note, (b) insurance proceeds, condemnation awards, or other sums or payments attributable to the Property, to the extent they are not being applied in accordance with the provisions of this Agreement, the Note, the Deed of Trust or the other Loan Documents, except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership, or similar judicial proceeding, to direct disbursement of such sums of payments, (c) all rents, profits, issues, products, and income of the Property received following an Event of Default under this Agreement, the Note, the Deed of Trust or any of the Loan Documents which are not applied to payment of principal and interest owing under the Note (including any amounts received or collected by or on behalf of Borrower after an Event of Default, except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership, or similar judicial proceeding, to direct the disbursement of such sums), and payments of utilities, taxes, and assessments, insurance, and ground rents, if any, on the Property, as they become due or payable, and (d) Borrower's failure to pay any charges due Issuer, Bond Trustee, or Majority Owner under the Note or any other Loan Documents in connection with any transfer of all or any part of the Property, or any interest therein, from Borrower to Borrower's transferee, or transfer of beneficial interest in Borrower (and the indebtedness and other obligations of Borrower for which Borrower will be personally liable under the foregoing provisions of this Section 22 is sometimes collectively referred to in the Loan Documents as the "Recourse Indebtedness"). Notwithstanding the

foregoing, nothing contained herein shall in any way limit the obligations of Borrower, Guarantor or any other individual or entity under the Guaranty, the Indemnity Agreement, or any other guaranty or indemnity.

23. COMPLETION OF IMPROVEMENTS BY MAJORITY OWNER. If Majority Owner takes possession of the Property, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to Majority Owner's right at any time to discontinue any work without liability. If Majority Owner elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints Majority Owner as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Majority Owner's option, either in Borrower's name or in its own name. In any event, all sums expended by Majority Owner in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the collateral. For these purposes, Borrower assigns to Majority Owner all of its right, title and interest in and to the Project Documents; however Majority Owner will not have any obligation under the Project Documents unless Majority Owner expressly hereafter agrees to assume such obligations in writing. Majority Owner will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. All rights, powers, and remedies of Majority Owner under this Agreement are cumulative and alternative, and are in addition to all rights which Majority Owner may have under applicable law.

24. LIMITATION ON ISSUER'S LIABILITY. The Issuer shall not be obligated to pay the principal of, premium, if any, or interest on the Bonds, except from Revenues.

Any obligation or liability of the Issuer created by or arising out of this Agreement (including without limitation any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Issuer or a charge upon its general credit, but shall be payable solely out of Revenues. Neither the issuance of the Bonds nor the delivery of this Agreement shall, directly or indirectly or contingently, obligate the Issuer to make any appropriation for payment of the Bonds. Nothing in the Bonds or this Agreement or the proceedings of the Issuer authorizing the Bonds or in the Act or the Law or in any other related document shall be construed to authorize the Issuer to create a debt of the Issuer within the meaning of any constitutional or statutory provision of the State. No breach of any pledge, obligation or agreement of the Issuer hereunder may impose any pecuniary liability upon the Issuer or any charge upon its general credit.

THE BOND IS ISSUED PURSUANT TO THE LAW AND IN ACCORDANCE WITH THE ACT AND IS A LIMITED OBLIGATION OF THE ISSUER. NEITHER

THE CITY COUNCIL OF THE ISSUER NOR ANY OFFICIAL OR EMPLOYEE OF THE ISSUER, NOR ANY PERSON EXECUTING THE BOND SHALL BE LIABLE PERSONALLY ON THE BOND OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE BOND AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THE LOAN AGREEMENT. NEITHER THE ISSUER, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH BOND OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR.

THE BOND AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE ISSUER, THE STATE OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR THE FAITH AND CREDIT OF THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE OR OTHER COSTS INCIDENT THERETO. THE BOND IS NOT A DEBT OF THE UNITED STATES OF AMERICA.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Agreement contained, against, the Issuer, any past, present or future member of its governing body, its officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of the Issuer, any member of its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Bonds, expressly waived and released as a condition of, and in consideration for, the execution of this Agreement and the issuance of the Bonds. It is recognized that notwithstanding any other provision of this Agreement, neither Borrower nor any Owner shall look to the Issuer or the members of its City Council, officers, program participants, attorneys, accountants, financial advisors, agents or staff for damages suffered by Borrower or such Owner as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Agreement, the Bonds, the Regulatory Agreement, any of the Bond Documents or Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason except for representations made by the Issuer in any certificate of the Issuer and the opinion of counsel to the Issuer delivered on the Delivery Date. Although this Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Issuer, nothing contained in this Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Issuer) in any court or before any governmental body, agency or instrumentality or otherwise against the Issuer or any of its officers or employees to

enforce the provisions of any of such documents which the Issuer is obligated to perform and the performance of which the Issuer has not assigned to the Trustee or any other person.

25. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

(a) **Agency.** Nothing in this Agreement shall be construed to constitute the creation of a partnership or joint venture between Majority Owner and Borrower or any contractor. Majority Owner is not an agent or representative of Borrower. This Agreement does not create a contractual relationship with and shall not be construed to benefit or bind Majority Owner in any way with or create any contractual duties by Majority Owner to any contractor, subcontractor, materialman, laborer, or any other person. Majority Owner's activities in connection with the Loan shall not be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and Majority Owner does not intend to ever assume any responsibility to any Person for the quality or safety of the Property. Majority Owner shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower.

(b) **Amendments.** This Agreement, together with any Exhibits attached hereto, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(c) **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. The loan transaction which is evidenced by the Note and this Agreement has been applied for, considered, approved, and made in the State of California. **IF THERE IS A LAWSUIT, GRANTOR AND BORROWER, AT MAJORITY OWNER'S OPTION, AGREE TO SUBMIT TO THE JURISDICTION OF THE SUPERIOR COURT OF CALIFORNIA FOR SAN DIEGO COUNTY.**

(d) **JURY WAIVER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS**

WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Judicial Reference.

(i) The parties hereto agree that any and all disputes, claims and controversies arising out of the Loan Documents or the transactions contemplated thereby (including, without limitation, actions arising in contract or tort and any claims by a party against Majority Owner related in any way to the or the transactions contemplated hereunder) (a “**Dispute**”) that are brought before a forum in which the pre-dispute waivers of the right to trial by jury set forth in Section 25(d) above are invalid under applicable law shall be subject to the terms of this Section 25(e) in lieu of the jury trial waivers set forth in Section 25(d) or as otherwise provided in the Loan Documents.

(ii) Any and all such Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure § 638 et seq. The parties shall use their respective commercially reasonable and good faith efforts to agree upon and select such referee, who shall be a retired California state or federal judge, provided, however, that the parties shall not appoint a referee that may be disqualified pursuant to California Code of Civil Procedure § 641 or § 641.2 without the prior written consent of all the parties. If the parties are unable to agree upon a referee within ten (10) calendar days after a party serves written notice of intent for judicial reference upon the other party or parties, then the referee shall be selected by the court in accordance with California Code of Civil Procedure § 640(b). The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the California Code of Civil Procedure, the Rules of Court and the California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee’s statement of decision shall set forth findings of fact and conclusions of law. The referee’s decision shall be entered as a judgment in the court in accordance with the provisions of California Code of Civil Procedure §§ 644-645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

(iii) If a Dispute includes multiple claims, some of which are found not subject to this Agreement, the parties shall stay the proceedings of the Disputes or part or parts thereof not subject to this Agreement until all other Disputes or parts thereof are resolved in accordance with this Agreement. If there are Disputes by or against multiple parties, some of which are not subject to this Agreement, the parties shall sever the Disputes subject to this Agreement and resolve them in accordance with this Agreement.

(iv) Nothing in this Section 25(e) shall be deemed to apply to or limit the rights of Majority Owner, Bond Trustee or Issuer (i) to exercise self-help remedies, including, without limitation, setoff, or (ii) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, or (iii) to obtain from a court provisional or ancillary remedies, including, without limitation, injunctive relief, writ(s) of possession, prejudgment attachment, protective order(s) or the appointment of a receiver, or (iv) to pursue rights against a party in a third-party proceeding in

any action brought against Majority Owner, Bond Trustee or Issuer, including, without limitation, actions in bankruptcy court. Majority Owner, Bond Trustee or Issuer may exercise the foregoing rights before, during or after the pendency of any judicial reference proceeding. The failure to exercise any of the foregoing remedies shall not constitute a waiver of the right of any party, including, without limitation, the claimant in any such action, to require submission to judicial reference the merits of the Dispute giving rise to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in this Section for judicial reference of any Dispute.

(v) During the pendency of any Dispute which is submitted to judicial reference in accordance with this Section, each of the parties to such Dispute shall bear equal share of the fees charged and costs incurred by the referee in performing the services described herein. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorneys' fees, expert witness fees, the fees of the referee and other reasonable costs and disbursements charged to the party by its counsel, in such amounts as determined by the referee.

(vi) Each party hereto acknowledges and agrees that the provisions of this Section constitute a material inducement to enter into this Agreement, the Loan Documents and to consummate the transactions contemplated thereunder, and that the parties will continue to be bound by and rely on such provisions in the course of their dealings with regard to any Dispute governed by the provisions of this Section. Each party hereto further warrants and represents that it has reviewed these provisions with legal counsel of its own choosing, or has had the opportunity to do so, and that it knowingly and voluntarily agrees to abide by the provisions of this Section having had the opportunity to consult with legal counsel.

(vii) THIS SECTION CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN OR AMONG THE PARTIES WITHIN THE MEANING OF AND FOR THE PURPOSES OF CALIFORNIA CODE OF CIVIL PROCEDURE § 638. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS EVIDENCE OF EITHER OR ALL PARTIES' CONSENT AND AGREEMENT TO HAVE ANY AND ALL DISPUTES HEARD AND DETERMINED BY A REFEREE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE § 638. THE PARTIES ACKNOWLEDGE THAT JUDICIAL REFERENCE PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THIS SECTION WOULD BE CONDUCTED BY A PRIVATE REFEREE ONLY, SITTING WITHOUT A JURY.

(f) **Guaranties Unsecured.** The Security Documents shall secure Borrower's obligations under the Loan Documents. Notwithstanding the fact that the Loan Agreement or any may now or hereafter include one or more Guaranties and/or other documents creating obligations of Persons other than Borrower, and notwithstanding the fact that any Security Document may now or hereafter contain general language to the effect that it secures "the " or the "Loan Documents," no Security Document shall secure any Guaranty, or

any other obligation of any Person other than Borrower, unless such Security Document specifically describes such Guaranty or other obligation as being secured thereby.

(g) Authority to File Notices. Borrower appoints and designates Majority Owner as its attorney-in-fact to file for record any notice that Majority Owner deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Bonds, the Bond Documents or the Loan Documents.

(h) Maintenance of Depository Relationship. Borrower shall, at all times while any portion of the Note remains unpaid, maintain a depository relationship with Majority Owner, or a subsidiary or affiliate of Majority Owner, unless the same is contrary to state or federal law or regulation.

(i) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

(j) Majority Owner's Right to Sell Participations in the Bonds. Subject to the terms of the Indenture, Majority Owner may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders (hereinafter called "Participants") all or any part of the indebtedness of Borrower at any time outstanding under the or the Loan Documents. Borrower acknowledges and agrees that any such disposition will give rise to an obligation of Borrower to each Participant and that, in such event, each Participant shall, for all purposes hereof, be entitled to the benefits under the Loan Documents and all other documents, instruments, and agreements therein described, as its interest may appear. Borrower shall, from time to time at the request of Majority Owner, at Majority Owner's sole cost and expense, execute and deliver, or cause to be executed and delivered, to Majority Owner or to such party or parties (including any Participant) as Majority Owner may designate, any and all such further instruments as may in the opinion of Majority Owner be necessary or desirable to give full force and effect to such disposition and such estoppel certificates or other instruments as may be requested from Borrower to evidence the continuing validity of the or the Loan Documents and the absence of any default by Majority Owner thereunder. Notwithstanding the foregoing, no Participant shall be deemed a direct lender or co-lender with Majority Owner and no Participant shall acquire any rights under the Indenture.

(k) Costs and Expenses. Borrower agrees to pay upon demand all of Majority Owner's out-of-pocket expenses, including reasonable and actual attorneys' fees, incurred in connection with this Agreement or in connection with the Loan made pursuant to this Agreement. Majority Owner may pay someone else to help collect the Loan and to enforce this Agreement and Borrower will pay that amount. This includes, subject to any limits under applicable law, Majority Owner's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

(l) **Entire Agreement.** This Agreement and the Loan Documents constitute all of the agreements between the parties relating to the Project and supersede all other prior or concurrent oral or written agreements or understandings relating to the Project.

(m) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the following addresses:

Borrower:

CORDOVA TROLLEY, LP
c/o South Bay Community Services
430 F Street
Chula Vista, California 91910

Issuer:

CHULA VISTA HOUSING AUTHORITY
276 Fourth Avenue
Chula Vista, California 91910
Attention: Development Services Department Housing Division

Majority Owner:

BANNER BANK
Loan Servicing Center
P.O. Box 1589
Bothell, Washington 98041
Loan No. 14013945

Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Borrower, notice to any Borrower will constitute notice to all Borrowers. For notice purposes, Borrower agrees to keep Majority Owner informed at all times of Borrower's current address(es).

(n) **Notice and Cure Rights of Investor Limited Partner.** Majority Owner agrees that it shall not instruct Bond Trustee to or directly complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "**Foreclosure Remedy**") unless and until Investor Limited Partner (or its designee(s), if applicable) has first been given thirty (30) days' written notice of the default(s) or Event(s) of Default giving rise to Majority Owner's right to complete such Foreclosure Remedy, and Investor Limited Partner has failed, within such thirty (30) day period, to cure such default(s) and Event(s) of Default; provided, however, that Majority Owner shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the , including, but not limited to, acceleration of the Note (subject to any de-acceleration provisions

specifically set forth in the Loan Documents or otherwise available under applicable law), exercise of its rights and remedies under the Loan Documents, commencement and pursuit of foreclosure (but not completion of the foreclosure sale), enforcement of any guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of any other Loan Document. It is the express interest of the parties hereunder that Majority Owner shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Investor Limited Partner for failure to provide notice to Investor Limited Partner, and that Majority Owner's liability hereunder shall be expressly limited to actual damages to Investor Limited Partner directly caused by Majority Owner's completion of a Foreclosure Remedy without Investor Limited Partner receiving the notice and opportunity to cure described above. Majority Owner's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Majority Owner under this Agreement or any other Loan Document. Unless expressly prohibited by law, Investor Limited Partner agrees to record a "Request for Notice," or similar appropriate document requesting notice of any foreclosure sale, in the Official Records of the County in which the Property is located and in the event the Majority Owner has not sooner provided notice to Investor Limited Partner, the receipt by the Investor Limited Partner of such notice of foreclosure sale shall be deemed to be notice to the Investor Limited Partner as contemplated hereunder. Except as specifically provided herein or in any other Loan Document, Majority Owner's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Majority Owner under this Agreement or any other Loan Document. Majority Owner shall give Investor Limited Partner notice at the address set forth below or such other address as Investor Limited Partner may instruct Majority Owner in writing from time to time:

Attention: _____
Fax: _____

Majority Owner shall accept or reject any tender of cure by Borrower's Investor Limited Partner on the same terms under which Majority Owner would accept or reject such tender of cure by Borrower.

(o) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(p) **Survival.** All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to

Majority Owner under this Agreement shall be considered to have been relied upon by Majority Owner and will survive the making of the Loan and delivery to Majority Owner of the Bonds, regardless of any investigation made by Majority Owner or on Majority Owner's behalf.

(q) Time of the Essence. Time is of the essence hereof.

(r) Waiver. Majority Owner shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Majority Owner. No delay or omission on the part of Majority Owner in exercising any right shall operate as a waiver of such right or any other right. A waiver by Majority Owner of a provision of this Agreement shall not prejudice or constitute a waiver of Majority Owner's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Majority Owner, nor any course of dealing between Majority Owner and Borrower, or between Majority Owner and any Grantor, shall constitute a waiver of any of Majority Owner's rights or of any obligations of Borrower or of any Grantor as to any future transactions. Whenever the consent of Majority Owner is required under this Agreement, the granting of such consent by Majority Owner in any instance shall not constitute continuing consent in subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Majority Owner.

(s) Multiple Parties; Corporate Authority. All obligations of Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower. This means that each of the Borrowers signing below is responsible for all obligations in this Agreement. Where any one or more of the parties are corporations or partnerships or limited liability companies, it is not necessary for Majority Owner to inquire into the powers of any of the parties or of the officers, directors, partners, members, or agents acting or purporting to act on their behalf.

(t) Errors and Omissions. Borrower, for and in consideration of the Loan, agrees, if requested by Majority Owner, to fully cooperate and adjust for clerical errors, if any, in any or all of the Loan Documents if deemed necessary or desirable in the reasonable discretion of Majority Owner to enable Majority Owner to sell, convey, seek guaranty or market said Loan to any entity, including but not limited to an investor, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Authority or the Department of Veteran Affairs, or any municipal bonding authority. Borrower agrees to comply with all above noted requests by Majority Owner within thirty (30) days from date of mailing said requests. Borrower agrees to assume all costs including, by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to comply with correction requests in above noted time period.

(u) Right of Setoff. Borrower grants to Majority Owner a contractual security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Majority Owner all Borrower's right, title and interest in and to, Borrower's accounts with Majority Owner (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all IRA and Keogh accounts, and all trust accounts for which the grant of a

security interest would be prohibited by law. Borrower authorizes Majority Owner, to the extent permitted by applicable law, to charge or setoff all sums owing on this Note against any and all such accounts.

(v) **Adjustment of Interest Rate Upon Loss of Tax Exclusion.** The interest rates applicable under the Note and with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the owners of the Bonds will be excludable from gross income under Section 103 of the Code and applicable State law, except for the Bonds when owned by a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code (as defined in the Indenture). In the event that (i) Majority Owner receives a written opinion from a nationally recognized bond counsel to the effect that, in such counsel’s opinion, interest on the Bonds will not be excluded from gross income of such owners for federal income tax purposes, other than as a result of the Bonds being held by a “substantial user” or a “related party” to such “substantial user” as used in Section 147(a) of the Code; or (ii) any owner receives notice from the Internal Revenue Service or other government agency that interest payable on the Bonds are not excludable from gross income of such owner for federal income tax purposes other than as a result of the being held by a “substantial user” or a “related party” to such “substantial user” as used in Section 147(a) of the Code, or that the Internal Revenue Service is challenging the tax-exempt status of the interest on the Bonds, then the interest rate on the Note, the and on all obligations under this Agreement shall be increased to a rate equal to the “Prime Rate” in effect for Banner Bank from time to time plus 2.00%. In addition, Majority Owner shall be paid, promptly upon demand, an amount equal to the difference between the amount of interest payable on the Note from the date on which such loss of tax exemption on the Bonds shall be applicable to the date on which the interest rate on the Note was increased and the amount of interest that would have been payable on the Note during such period had the Note borne interest during such period at such higher rate. If, following any increase in interest rates pursuant to this Section, a final determination is made, to the satisfaction of Majority Owner, that interest paid on the Bonds was, at all times prior to the determination, and will continue to be, excludable from the owner’s gross income under Section 103 of the Code and applicable state law, Majority Owner shall promptly refund within 30 days of receipt of such determination of a demand to the Borrower any additional interest paid by the Borrower pursuant to this Section.

(w) **Subordination to Extended Use Agreement.** In order to receive an allocation of low income housing tax credits, Borrower will be required to record in the real property records of the county in which the property is located, an “extended low-income housing commitment” (as defined in Code Section 42(h)(6)(B)) (the “**Extended Use Agreement**”). Majority Owner agrees that the lien of the Deed of Trust may be subordinated to the Extended Use Agreement, provided, however, that the following conditions are met:

(i) under the terms of the Extended Use Agreement, if Majority Owner, or its successors or assigns (collectively, the “**REO Owner**”) acquire the Property and Improvements by foreclosure (or instrument in lieu of foreclosure), then the “extended use period” (as defined in Code Section 42(h)(6)(D)) shall terminate, except for the obligation of the REO Owner to comply with the limitations on evictions, termination of tenancy and

increase in rents for the three year period following the REO Owner's acquisition of the Property, as set forth in Code Section 42(h)(6)(E)(ii).

(x) **Cure of Events of Default.** Notwithstanding the fact that a curable default by Borrower under the Loan Documents does not become an "Event of Default" until the applicable cure period, if any, has elapsed, various provisions of the Loan Documents include the phrase, "upon the occurrence and during the continuance of an Event of Default", or otherwise imply that Events of Default may be cured. No such provision shall be construed to give Borrower any right to cure any Event of Default. Notwithstanding the fact that the Loan Documents do not permit Borrower to cure any Event of Default, however, any Event of Default shall be deemed cured in the event that (a) Majority Owner, in its sole and absolute discretion, and without any obligation to do so, elects to accept a cure and acknowledges to Borrower in writing that such Event of Default shall be deemed fully cured, or (b) any applicable law provides Borrower with an absolute right (which by law may neither be waived by Borrower nor conditioned upon Majority Owner's consent) to cure such Event of Default and Borrower timely performs all actions required by such law to effect such cure.

(y) **NOTICE, REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING COMPLIANCE WITH ANTI-TERRORISM LAWS.**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires Majority Owner to obtain, verify, and record information that identifies each person who opens an account. This means that Majority Owner will ask for Borrower's name, Tax ID number, address, date of birth, and other information, as applicable, including identifying documents that will allow Majority Owner to properly identify Borrower. In addition, Borrower hereby represents and warrants to, and agrees with, Majority Owner as follows regarding Anti-Terrorism Laws:

(i) None of Borrower or any loan guarantor or their respective constituents or affiliates or any of their respective agents acting or benefiting in any capacity in connection with the Loan (collectively, the "**Borrower Parties**", each a "**Borrower Party**") is in violation of any laws relating to terrorism or money laundering, including, but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 ("**Patriot Act**"), collectively referred to herein as "**Anti-Terrorism Laws**";

(ii) No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against any Borrower Party alleging any violation of any Anti-Terrorism Law;

(iii) No Borrower Party has, after due investigation and inquiry, knowledge, or notice of any fact, event, circumstance, situation, or condition that could reasonably be expected to result in (i) any action, proceeding, investigation, charge, claim, report, or notice being filed, commenced, or threatened against any of them alleging any violation of, or failure to comply with, any Anti-Terrorism Law, or (ii) the imposition of any civil or criminal penalty against any of them for any failure to so comply;

(iv) No Borrower Party or, to Borrower's knowledge, the seller of the Property (if any portion of the Property is being acquired with proceeds of the Loan), is a "Prohibited Person." A Prohibited Person means any of the following:

(v) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(vi) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(vii) a person or entity with whom Majority Owner is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(viii) a person or entity who commits, threatens, or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(ix) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list;

(x) No Borrower Party or, to Borrower's knowledge, the Seller of the Property (if any portion of the Property is being acquired with proceeds of the Loan) (i) conducts any business or engages in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law;

(xi) Borrower shall not (i) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law;

(xii) Notwithstanding any other provision of this Agreement, before any assignment, mortgage, encumbrance, pledge, hypothecation or grant of a security interest in all or any direct or indirect ownership interest in Borrower, and before any changes in direct or indirect ownership of any Borrower Party, Borrower shall give a written notice to Majority Owner (i) advising Majority Owner, in reasonable detail as to the proposed ownership change, and (ii) reaffirming that the representations and warranties herein contained will remain true and correct.

Borrower agrees to deliver to Majority Owner any certification, other evidence requested from time to time by Majority Owner in its reasonable discretion, and sufficient information (including names, addresses, and where applicable, jurisdiction of formation or organization) to reasonably permit Majority to verify and confirm the accuracy of, and Borrower's compliance with, the foregoing representations, warranties and agreements.

[Signature pages follow]

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS CONSTRUCTION AND TERM LOAN AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF THE DATE FIRST SET FORTH ABOVE.

BORROWER:

CORDOVA TROLLEY, LP,
a California limited partnership

By: Cordova Trolley Management, LLC,
a California limited liability company,
its Managing General Partner

By: South Bay Community Services,
a California nonprofit public benefit corporation,
its Sole Member and Manager

By: _____
Kathryn Lembo
President and Chief Executive Officer

[Signature Page to Construction and Term Loan Agreement]

ISSUER:

CHULA VISTA HOUSING AUTHORITY

By: _____
Authorized Officer

[Signature Page to Construction and Term Loan Agreement]

MAJORITY OWNER:

BANNER BANK,
a Washington corporation

By: _____
Waheed Karim
Vice President

[Signature Page to Construction and Term Loan Agreement]

EXHIBIT A
REAL PROPERTY

Exhibit A

EXHIBIT B
BUDGET

Exhibit B

EXHIBIT C

INTENTIONALLY OMITTED

Exhibit C

EXHIBIT D

SCHEDULE OF EQUITY CAPITAL CONTRIBUTIONS

<u>Installment</u>	<u>Amount</u>	<u>Require Date</u>	<u>Construction Source (Yes/No)</u>
First Installment	\$ _____	Closing Date	Yes
Second Installment	\$ _____	Interim Construction Loan Maturity Date (as such date may be extended under the terms and conditions set forth in the Note)	No
Third Installment	\$ _____	Satisfaction of the conditions precedent to the Third Installment set forth in Section _____ of the Partnership Agreement	No

Exhibit D

EXHIBIT E

LOAN DOCUMENTS

1. This Agreement
2. The Note
3. The Deed of Trust
4. Deed of Trust Assignment
5. The Subordination Agreements
6. Commercial Guaranty dated as of even date herewith, executed by Guarantors in favor of Issuer
7. Hazardous Waste Warranty and Indemnification Agreement dated as of even date herewith, from Borrower and Guarantor to Issuer, Bond Trustee and Majority Owner
8. Assignment of Construction Contracts and Permits dated as of even date herewith, from Borrower to Issuer
9. Assignment of Architect Contracts and Plans dated as of even date herewith, from Borrower to Issuer
10. Assignment of Engineering Contracts dated as of even date herewith, from Borrower to Issuer
11. Assignment of Rights under Development Agreement dated as of even date herewith, from Borrower to Issuer
12. Assignment of Rights under Management Agreement dated as of even date herewith, from Borrower to Issuer
13. Security Agreement (Assignment of Partnership Interests and Capital Obligations) dated as of even date herewith, from Borrower and General Partner to Issuer
14. Replacement Reserve and Security Agreement
15. State of California Uniform Commercial Code Financing Statement Forms UCC-1, naming Borrower as debtor for the benefit of Issuer, as secured party, and Bond Trustee as assignee of secured party, relating to the Deed of Trust, filed with the California Secretary of State
16. Partnership Agreement to Borrower and Grant Security executed by General Partner in favor of Issuer, Bond Trustee and Majority Owner

Exhibit E

17. Certificate and Resolutions of general partner of Borrower
18. Corporate Resolution to Guaranty
19. Opinions of counsel to Borrower, general partner of Borrower and any guarantor with respect to the due authorization, execution, delivery and enforceability of the Loan Documents to which they are a party
20. Opinion of Bond Counsel regarding the exemption of the interest on the Bonds from federal income taxation

Exhibit E

EXHIBIT F

PERMITTED DEVELOPER FEE SCHEDULE

Source of Payment	Amount Permitted	Timing of Payment
Loan proceeds or Borrower's Funds Account proceeds	\$_____	Completion of the Improvements as determined by Majority Owner
Second Installment of Equity Capital Contributions	\$_____	Conversion Date
Third Installment of Equity Capital Contributions	\$_____	Satisfaction of the conditions precedent to Third Installment in Section ___ of the Partnership Agreement
Net Cash Flow to the Project to the extent it is available	\$_____	Following Conversion Date and only to the extent net cash flow is available

Exhibit F