

AGREEMENT NUMBER ARRA CA-2009-__

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
AMERICAN RECOVERY AND REINVESTMENT ACT of 2009
LOAN AGREEMENT

(BORROWER NAME)
(BORROWER ADDRESS)

- A. This Loan Agreement (the "*Agreement*," or "*Loan Agreement*") is made this _____ day of _____, 200_, between, _____, a _____ (the "*Borrower*") and the *California Tax Credit Allocation Committee, a public agency of the State of California* (the "*Committee*" or "*Lender*"). If Tax Credit Assistance Program funds are being awarded to Borrower as a part of this Agreement, this is not a commitment until the Borrower complies with Exhibit G, item G-1.

RECITALS

- B. Borrower owns or proposes to acquire the fee [ground leasehold] interest in the certain real property described in **Exhibit A** (the "*Property*").
- C. Borrower proposes to construct or rehabilitate [has constructed or rehabilitated] on the Property certain improvements as described in the Application (defined below and attached as Exhibit B) (the "*Improvements*").
- D. Lender has the authority to receive the [HUD Grant] [Treasury Grant] and use the proceeds of the Grant to make loans to provide financial assistance to qualified affordable housing developments.
- E. Borrower wishes to exchange the LIHTC and borrow the funds from Lender, and Lender has approved the funding of the Loan through the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) ("ARRA") Section 1602 program on the terms and conditions herein contained; or
- F. Borrower wishes to borrow the funds from Lender, and Lender has approved the funding of the Loan through --**TCAP or Section 1602**-- (defined below) on the terms and conditions herein contained.
- G. The Development (defined below) meets the Program Requirements (defined below), and Lender has approved the funding of the Loan.

NOW, THEREFORE, Lender and Borrower agree as follows:

ARTICLE I – DEFINITIONS

Section 1.1 DEFINED TERMS. The following capitalized terms generally used in this Agreement shall have the meanings defined or referenced below. Certain other capitalized terms used in specific sections of this Agreement are defined in such sections. Capitalized terms used but not defined in this Agreement will have the meaning set forth in the Regulations.

“*Application*” means Borrower’s initial tax credit application to the Lender which is attached hereto as **Exhibit B** and incorporated herein by reference.

“*Construction Lender*” - means _____, a _____.

“*Deed of Trust*” – means that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith executed by Borrower as trustor for the benefit of Lender, as beneficiary, as hereafter amended, supplemented, replaced or modified.

“*Development*” means the Property and the Improvements constructed or rehabilitated or to be constructed or rehabilitated thereon as more specifically described in the Borrower’s Application.

“*Effective Date*” means the date the Deed of Trust is recorded in the Office of the County Recorder of the county where the Property is located.

“*Eligible Costs*” means those costs listed on **Exhibit D**.

“*Event of Default*” shall have the meaning given to such term in Section 8.1 of this Agreement.

“*Guarantor*” means any person or entity who, or which, in any manner, is or becomes obligated to Lender under any guaranty now or hereafter executed in connection with respect to the Loan (collectively or severally as the context thereof may suggest or require).

“*Hazardous Materials*” shall have the meaning given to such term in Section 6.1.

“*Hazardous Materials Claims*” shall have the meaning given to such term in Section 6.1.

“*Hazardous Materials Laws*” shall have the meaning given to such term in Section 6.1.

“*HUD*” means the United States Department of Housing and Urban Development.

“*Loan*” means that certain loan(s) as defined in Section 10323 of the Regulations made by Lender to Borrower pursuant to the terms and conditions of the Loan Documents.

“*Loan Documents*” means those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in **Exhibit C** as Loan Documents.

“*Manager*” means Property manager _____, a _____.

“*Note*” means that certain Promissory Note of even date herewith, in the original principal amount of the Loan, executed by Borrower and payable to the order of Lender, as hereafter amended, supplemented, replaced or modified.

“*Other Related Documents*” means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in **Exhibit C** as Other Related Documents.

“Program Requirements” means all federal and state laws, rules regulations and guidelines applicable to the Loan, or the Project, as amended from time to time.

“Regulatory Agreement” means Lender’s Regulatory Agreement, to be recorded with the deed of trust for this the Property.

“Restrictions” – means all regulatory agreements and covenants, conditions and restrictions recorded against the Property and approved by Lender.

“Right of First Refusal Agreement” means the Right of First Refusal Agreement of even date herewith between Lender and Borrower, in the form set forth in **Exhibit E** hereto.

“Section 1602” means the Section 1602 program, through which the United States Department of Treasury awards grants (**“Section 1602 Funds”**) to Lender to provide funding to complete construction of qualified housing developments.

“TCAP” means the Tax Credit Assistance Program, through which HUD awards grants (**“TCAP Funds”**) to Lender to provide funding to complete construction of qualified housing developments.

“Treasury” means the United States Department of Treasury.

Section 1.2 EXHIBITS INCORPORATED. Exhibits A, B, C, D, E, F, G and H all attached hereto, are hereby incorporated into this Agreement.

ARTICLE II –LOAN

Section 2.1 – LOAN. By and subject to the terms of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender the principal sum of _____ Million _____ Dollars (\$_____), said sum to be evidenced by the Note of even date herewith. The Note shall be secured, in part, by the Deed of Trust, of even date herewith, encumbering certain real property and improvements as legally defined therein. Amounts disbursed to or on behalf of Borrower pursuant to the Note shall be used to finance the acquisition, construction or renovation of the Property and Improvements and for such other purposes and uses as may be permitted under this Agreement and the other Loan Documents.

Section 2.2 – INTEREST RATE. The Borrower shall pay interest at the rate of zero percent (0%) on the outstanding balance of the Loan as provided in the Note.

Section 2.3 – PRINCIPAL PAYMENTS. Borrower shall make no payments of principal to reduce the outstanding balance of the Loan as provided in the Note.

Section 2.4 – LOAN DOCUMENTS. Borrower shall deliver to Lender, concurrently with this Agreement, each of the documents, properly executed and in recordable form, as applicable, described in Exhibit C as Loan Documents, together with those documents described in Exhibit C as Other Related Documents.

Section 2.5 - EFFECTIVE DATE. The date of the Loan Documents is for reference purposes only. The Effective Date of delivery and transfer to Lender of the security under the Loan Documents and of Borrower's and Lender's obligations under the Loan Documents shall be the date the Deed of Trust is recorded in the Office of the County Recorder of the county where the Property is located.

Section 2.6 – REPAYMENT. The entire principal amount shall be due and payable on the termination of this Loan Agreement, which shall be fifty-five (55) years from the execution of this Loan Agreement, unless Treasury requires a shorter term and no repayment.

Section 2.7 – NONRECOURSE OBLIGATIONS UNDER THIS AGREEMENT. The obligations under this Note shall be without recourse against the Borrower and any partners, general or limited, of the Borrower. Notwithstanding anything in this Paragraph 2.7 to the contrary, Borrower, and any general partner of Borrower, shall be liable for each and all of the following:

(a) Any fraud, intentional misrepresentation or omission, or other cause of action, that is independent of liability under the Loan Documents;

(b) Any waste or intentional destruction of the Development or of any collateral secured by the Deed of Trust;

(c) All insurance proceeds, condemnation awards, or other sums or payments attributable to the Development not applied in accordance with the terms of the Loan Documents, except to the extent that such sums were not applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of bankruptcy, receivership, or similar judicial proceeding;

(d) All rents, lease payments, profits, issues and other income from the Development received by or on behalf of the Borrower with the terms of the Loan Documents, except to the extent that such sums were not applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of bankruptcy, receivership, or similar judicial proceeding; and

(e) Any liability arising under or pursuant to any Borrower indemnity contained in the Loan Documents.

Section 2.8 – CREDIT FOR PRINCIPAL PAYMENTS. Any payment made upon the outstanding principal balance of the Loan shall be credited as of the Business Day received, provided such payment is received by Lender no later than 11:00 a.m. (Pacific Standard Time or Pacific Daylight Time, as applicable) in immediately available funds. Any principal payment that is received after this time or that does not constitute immediately available funds shall be credited upon such funds having become unconditionally and immediately available to Lender.

Section 2.9 – FULL REPAYMENT AND RECONVEYANCE. Upon receipt of all sums owing and outstanding under the Loan Documents, Lender shall issue a full reconveyance of the Property and Improvements from the lien of the Deed of Trust; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Lender shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Loan Documents; and (b) Lender shall have received a written release satisfactory to Lender of any set aside letter, letter of credit or other form of undertaking which Lender has issued to any surety, governmental agency or any other party in connection with the Loan and/or the Property and Improvements. Lender's obligation to make further disbursements under the Loan shall terminate as to any portion of the Loan undisbursed as of the date of issuance of such full release or reconveyance, and any commitment of Lender to lend any undisbursed portion of the Loan shall be canceled.

ARTICLE III – INSURANCE

Section 3.1 – INSURANCE REQUIREMENTS. Borrower shall, while any obligation of Borrower or any Guarantor under any Loan Document remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by Lender, the following policies of insurance and such other coverage as may be required by the Lender in form and substance satisfactory to Lender:

(a) Builders Risk. A Builders Risk Completed Value Hazard Insurance policy, including, without limitation, such endorsements as Lender may require, insuring Lender against damage to the Property and Improvements in an amount acceptable to Lender. Lender shall be named on the policy under a Lender's Loss Payable Endorsement (form #438BFU or equivalent).

(b) Liability. A policy of comprehensive general liability insurance with limits as required by Lender, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Property and/or in the Improvements from any cause whatsoever.

(c) Other. Such other binders or policies of insurance as Lender may require.

(d) Acceptance of Construction Lender Approvals. During the construction of the Development, Lender shall accept insurance coverage as approved by the Construction Lender.

Section 3.2 – GENERAL. Borrower shall provide to Lender certificates of insurance evidencing all required insurance policies, or other evidence of insurance acceptable to Lender. Notwithstanding the foregoing, Lender reserves the right, in its sole discretion, to require the Borrower to provide Lender with the original of all such policies. All insurance policies shall provide that the insurance shall not be cancelable or materially changed without thirty (30) days prior written notice to Lender. Lender shall be named under an Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all insurance policies which Borrower actually

maintains with respect to the Property and Improvements. Borrower shall provide to Lender evidence of any other hazard insurance Lender may deem necessary at any time during the Loan.

ARTICLE IV - LOAN DISBURSEMENT PROCEDURES

Section 4.1 – CONDITIONS PRECEDENT. Lender’s obligation to make any disbursements is subject at all times to satisfaction of each of the following conditions precedent:

(a) Delivery of Documents. Borrower shall have delivered to Lender executed originals of all Loan Documents and all other documents, instruments, policies, and forms of evidence or other materials requested by Lender under the terms of this Agreement or any of the other Loan Documents, including without limitation, an opinion from Borrower’s counsel that the Development complies with the provisions of Article XXXIV of the California Constitution and copies of all required policies of insurance, all in form and substance satisfactory to Lender.

(b) Review and Approval of Certain Documents Affecting the Development. Lender shall have reviewed and approved or accepted the other documents related to the Development and any such document not completed in all respects shall have been completed to Lender’s satisfaction.

(c) No Event of Default. There shall exist no Event of Default as defined in this Agreement or Event of Default as defined in any of the other Loan Documents or in the Other Related Documents, and there shall exist no event, omission or failure of condition which, after notice or lapse of time, or both, would constitute an Event of Default.

(d) Funding Conditions. Borrower shall have met all funding conditions in accordance with Section 4.2 of this Agreement, including but not limited to proof of acceptable funding commitments for construction and take - out financing and evidence acceptable to Lender showing fee title or a leasehold interest in the Development vested in Borrower.

(e) Eligible Costs. Disbursements of the Loan shall be only for the Eligible Costs set forth in Exhibit D, in an aggregate amount of not more than the amounts set forth in Exhibit D for each Eligible Cost, except as provided herein. Borrower shall obtain written authorization from Lender to make changes in the approved budget that exceed ten percent (10%) of the amount of the total development costs per Exhibit D. Borrower shall provide Lender with such documentation as Lender requires to confirm the application or proposed application of Loan funds to payment of Eligible Costs.

(f) Tri-Party Agreement. Borrower shall have entered into that certain Tri-Party Agreement with Lender and Construction Lender (the “*Tri-Party Agreement*”).

(g) Inspection Reports; Certifications. Pursuant to the Tri-Party Agreement, Construction Lender shall have provided to Borrower and Lender without warranty or liability each of the following, in form and content acceptable to Lender in its reasonable discretion:

(i) Copies of all building inspection reports for all ARRA draw requests; and

(ii) Copies of all certifications provided to Construction Lender, including without limitation certifications from Borrower's licensed structural engineer, a licensed asbestos abatement consultant (if required by Construction Lender), licensed lead-based paint abatement consultant (if required by Construction Lender), and licensed architect.

(h) Final Budget and Schedule. Borrower shall submit to Lender a final sources and uses statement, including total development costs, and a detailed construction schedule that establishes time frames for meeting deadlines. The sources and uses statement and construction schedule must be submitted and deemed acceptable to Lender prior to any request for disbursement of funds.

(i) Disbursement Request. Borrower shall have submitted to Lender a written request for disbursement ("**Disbursement Request**") in form and substance as set forth on **Exhibit F**, attached hereto and incorporated herein by this reference. Disbursement Requests shall be made by the persons listed in Exhibit F, who have been authorized by Borrower to request such disbursements until such time as written notice of Borrower's revocation of such authority is received by Lender and acknowledged.

Section 4.2 – TERM OF COMMITMENT. In the event Borrower has not fulfilled all conditions precedent set forth in this Article within 30 days of Borrower's execution of this Agreement, Lender's obligation under this Agreement shall automatically terminate unless extended by Lender.

Section 4.3 – DISBURSEMENTS; LENDER AUTHORIZATION. Loan proceeds shall be disbursed up to the amount authorized under this Agreement. Borrower may request one (1) disbursement of the Loan in a calendar month. Subject to the conditions set forth in Section 4.1, Borrower may request disbursements of up to one hundred percent of the proceeds of the Loan for reimbursable eligible costs.

Lender shall use its best efforts to respond to a Disbursement Request within twenty (20) business days after receipt of the Disbursement Request. Upon receipt of the complete signed Disbursement Request, Lender shall either (1) authorize the disbursement of Loan proceeds to Borrower; or (2) notify Borrower in writing within five (5) Business Days of any deficiencies or discrepancies in the Disbursement Request. Borrower shall not receive a disbursement until Borrower corrects any such deficiencies or discrepancies. The proceeds of the Loan, when qualified for disbursement, shall be disbursed to, or for, the benefit or account of Borrower under the terms of this Agreement; provided, however, that any direct disbursements from the Loan which are made by means of wire transfer shall be subject to the provisions of any funds transfer agreement which is identified in the list of Loan Documents in Exhibit C hereto.

Section 4.4 – APPLICATION OF LOAN DISBURSEMENTS. All disbursements shall be held by Borrower in trust and applied by Borrower solely for the Eligible Costs for which the funds have been disbursed. Borrower's expenditure of Loan funds for (a) costs not set forth in Exhibit D or the Disbursement Request approved by Lender, or (b) listed Eligible Costs which deviate, by more than the greater of ten percent (10%) in the total development budget per Exhibit D, must be preapproved in writing by Lender. Use of Loan proceeds without such prior approval shall result in the suspension of subsequent Loan disbursements and may be deemed by

Lender to constitute an Event of Default hereunder. The amount of all ineligible Loan expenditures shall be immediately repaid to Lender.

Section 4.5 – REVIEW OF DOCUMENTS; LENDER APPROVAL. Lender’s approval, review or modification of the certifications or other documents related to the Development is for Lender’s internal purposes only. Any Lender review or approval specifically shall exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations. By approving, reviewing, modifying or otherwise commenting on any of Borrower’s agreements and documents, Lender shall not be deemed to make any express or implied warranty of the reviewed matters for any intended use or purpose. The scope and breadth of any review by Lender is at Lender’s sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

ARTICLE V – REPRESENTATIONS AND WARRANTIES

As a material inducement to Lender’s entry into this Agreement, Borrower represents and warrants to Lender as of the Effective Date and continuing thereafter that:

Section 5.1 – AUTHORITY/ENFORCEABILITY. Borrower is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own, develop and operate the Property and Improvements as contemplated by the Loan Documents.

Section 5.2 – BINDING OBLIGATIONS. Borrower is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Borrower.

Section 5.3 – NO VIOLATION. Borrower's execution, delivery, and performance under the Loan Documents does not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of incorporation, bylaws or other document; (b) violate any governmental requirement applicable to the Property and Improvements or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Borrower is or the Property and Improvements are bound or regulated; or (d) violate any statute, law, regulation or ordinance, or any order of any court or governmental entity.

Section 5.4 – COMPLIANCE WITH LAWS. Borrower has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy, operate and market the Property and Improvements, and shall maintain compliance with all governmental requirements applicable to the Property and Improvements and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business. The Property is a legal parcel lawfully created in full compliance with all subdivision laws and ordinances.

Section 5.5 – LITIGATION. Except as disclosed to Lender in writing, there are no claims, actions, suits, or proceedings pending, or to Borrower's knowledge threatened, against Borrower or affecting the Property or Improvements.

Section 5.6 – ACCURACY. All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.

Section 5.7 – TAX LIABILITY. Borrower has filed all required federal, State, county and municipal tax returns and has paid all taxes and assessments owed and payable, and Borrower has no knowledge of any basis for any additional payment with respect to any such taxes and assessments.

Section 5.8 – COMPLIANCE WITH PROGRAM REQUIREMENTS. The Development, the provisions of this Agreement and the Loan Documents, and all other agreements, financing documents and commitments entered into by Borrower in connection with the Development comply with the Program Requirements, except as such requirements have been expressly waived in writing by an authorized official of the Treasury or HUD or any other agency having jurisdiction.

Section 5.9 – COMPLIANCE WITH NEW RESTRICTIONS ON LOBBYING. Borrower has executed and agrees to the “Certification for Contracts, Grants, Loans And Cooperative Agreements,” attached as Exhibit H and further agrees that the certification will be submitted to the HUD in accordance with Part 87 of Title 24 of the Code of Federal Regulations.

Section 5.10 – PROFESSIONAL ADVICE. Borrower has access to professional advice to the extent necessary to enable Borrower to fully comply with the terms of the Loan Documents.

ARTICLE VI –HAZARDOUS MATERIALS

Section 6.1 - SPECIAL REPRESENTATIONS AND WARRANTIES. Without in any way limiting the other representations and warranties set forth in this Agreement, Borrower hereby specially represents and warrants to the best of Borrower's knowledge as of the date of this Agreement as follows:

(a) Hazardous Materials. Except as disclosed in writing to Lender, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations but excluding any materials commonly used in the construction or operation of multifamily housing projects if used in accordance with all applicable requirements (collectively, the “*Hazardous Materials*”).

(b) Hazardous Materials Laws. The Property and Improvements are in compliance with all laws, ordinances and regulations relating to Hazardous Materials (“*Hazardous Materials Laws*”), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C.

Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) Hazardous Materials Claims. There are no claims or actions pending or threatened against Borrower, the Property or Improvements by any governmental entity or Lender or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws ("**Hazardous Materials Claims**").

(d) Border Zone Property. The Property has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 *et seq.* and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as Border Zone Property.

Section 6.2 - HAZARDOUS MATERIALS COVENANTS. Borrower agrees as follows:

(a) No Hazardous Activities. Borrower shall not cause or permit the Property or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(b) Compliance. Borrower shall comply and cause the Property and Improvements to comply with all Hazardous Materials Laws.

(c) Notices. Borrower shall immediately notify Lender in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property and Improvements; (ii) any knowledge by Borrower that the Property and Improvements do not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as Border Zone Property.

(d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property or Improvements, Borrower shall immediately take, at Borrower's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

Section 6.3 – INSPECTION BY LENDER. Upon reasonable prior notice to Borrower, Lender, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Improvements for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Improvements.

Section 6.4 – HAZARDOUS MATERIALS INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER, ITS DIRECTORS, OFFICERS, 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 ATTORNEY FEES AND EXPENSES) WHICH LENDER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO LENDER 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 LENDER SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.

Section 6.5 – LEGAL EFFECT OF SECTION. Borrower and Lender agree that: (a) this Article VI is intended as Lender's written request for information (and Borrower's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure § 726.5; and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Lender and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify Lender hereunder shall survive: (i) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof; (ii) the release and reconveyance or cancellation of the Deed of Trust; and (iii) the satisfaction of all of Borrower's obligations under the Loan Documents.

ARTICLE VII – COVENANTS OF BORROWER

Section 7.1 – OTHER FINANCING. Borrower shall close all construction financing within 120 days of execution of this Agreement. In the event Borrower has not fulfilled this condition within 120 days of Borrower's execution of this Agreement, Lender's obligation under this Agreement shall automatically terminate unless extended by Lender.

Section 7.2 – PROJECT COMPLETION. Borrower shall provide to Lender a Certificate of Occupancy or recorded Notice of Completion, to be issued by the local building authority for the Improvements no later than June 16, 2011. Borrower shall comply with any and all other deadlines for the project to be placed in service.

Section 7.3 – LEASING. Borrower shall use its best efforts to lease one hundred percent (100%) of the residential units in the Improvements to tenants and at rental rates approved by Lender and consistent with the Regulatory Agreement and all other restrictions recorded against the Property.

Section 7.4 – SUBDIVISION MAPS AND EASEMENTS. Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind (collectively, "**Subdivision Map**") or any easement covering any portion of the Property, Borrower shall submit such Subdivision Map or easement to Lender for Lender's review and approval, which approval shall not be unreasonably withheld. Borrower shall execute, acknowledge and deliver to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map or easement.

Section 7.5 – FURTHER ASSURANCES. Upon Lender's request and at Borrower's sole cost and expense, Borrower shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as determined by Lender, to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any liens created by the Loan Documents.

Section 7.6 – ASSIGNMENT. Without the prior written consent of Lender or except as permitted by the Regulatory Agreement, Borrower shall not assign Borrower's interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Borrower acknowledges that Lender would not make this Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing commercial real property, Lender's knowledge of Borrower.

Section 7.7 – MANAGEMENT OF PROPERTY. Borrower shall enter into a Management Agreement for the Property with Manager as manager (the "**Management Agreement**"). The Management Agreement shall be structured so that it is subject to termination with or without cause by the Borrower or the Lender, and without penalty, upon thirty (30) days prior written notice to the Manager. Any liability associated with the termination of the Management Agreement shall be the sole obligation of the Borrower. Upon notice of termination, the Borrower agrees to make immediate alternative arrangements, satisfactory to the Lender, for the continued management of the Development. In the event that the Borrower shall fail to make such alternative arrangements for a substitute managing agent within a reasonable time (which in no event shall exceed sixty (60) days from the date of the sending of the termination notice), the Lender shall have the right to make such alternative arrangements with the consent of the Construction Lender. Except as otherwise permitted by the terms of this Agreement, Borrower shall not materially amend or materially modify, nor shall Borrower terminate the Management Agreement.

Section 7.8 – BOOKS AND RECORDS. Borrower shall maintain complete books of account and other records for the Property and Improvements and for disbursement and use of the proceeds of the Loan in accordance with generally accepted accounting principles, consistently applied.

Section 7.9 – EXISTENCE. Borrower shall preserve and maintain its existence and all of its rights, privileges and franchises; conduct its business in an orderly, efficient, and regular manner; and comply with the requirements of all applicable laws, rules, regulations, and orders of a governmental authority.

Section 7.10 – TAXES AND LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes (real and personal), including Federal

and state income taxes, provided that provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

Section 7.11 – LITIGATION. Borrower shall promptly give notice in writing to Lender of any administrative action or litigation pending or threatened against Borrower, or the Development in which the amount claimed is in excess of \$5,000.

Section 7.12 – CHANGE IN STATUS/UNINSURED LOSS. Borrower shall promptly give notice in writing to Lender of: (1) any change in the name of Borrower, and in the case of a corporation, partnership or joint venture, any change in name, identity or corporate status.

Section 7.13 – POST-EXECUTION SYNDICATION REIMBURSEMENT REQUIREMENT. Promptly give notice in writing to Lender in the event the Borrower syndicates and sells a portion of its ownership interest in the Development to an entity seeking tax losses associated with the Development where such syndication was not set forth in the Application. In the event of a post-execution syndication, Borrower agrees to remit nine-tenths (9/10ths) of the gross proceeds of any such sale to Lender as recaptured Loan proceeds.

Section. 7.14 – RELEASE. Borrower shall waive all claims and recourse against Lender including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Agreement, Borrower's use of the Loan proceeds, Borrower's business operations, or the Development, other than a default by Lender hereunder.

Section 7.15 – NON-DISCRIMINATION CLAUSE. During the term of this Agreement, Borrower and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave. Borrower and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Borrower and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) and the applicable regulations promulgated thereunder (Chapter 5 (commencing with Section 7285) of Division 4 of Title 2 of California Code of Regulations). The applicable regulations of the Fair Employment and Housing Commission (referenced above), are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Borrower and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Section 7.16 – COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Borrower shall comply with the California Environmental Quality Act, California Public Resources Code section 21000 *et seq.* and the State CEQA Guidelines pursuant to State law, to the extent that law applies to the Development.

Section 7.17 – COMPLIANCE WITH REGULATORY AGREEMENT. Borrower shall comply with the Regulatory Agreement recorded against the Development pursuant to California Health and Safety Code Section 50199.14(f).

Section 7.18 – INSURANCE. Borrower shall maintain any and all required insurance policies for the term of this Agreement.

Section 7.19 – REPORTING TO LENDER. Borrower shall timely provide all required monthly and other reports and notices to the Lender during the term of this Agreement, including without limitation all certifications provided to Construction Lender and/or Borrower and a construction progress schedule detailing the progress of construction and the projected sequencing and completion time for uncompleted work, all as of the date of such schedule.

Section 7.20 – USE OF FUNDS. Borrower shall not use any Loan proceeds for purposes other than as described in Exhibit D.

Section 7.21 – MERGER, CONSOLIDATION, SALE OF ASSETS. Borrower shall not merge, consolidate or otherwise alter Borrower's form of business, or acquire all or substantially all of the assets of any other corporation or entity; or sell, lease, assign, or otherwise dispose of more than twenty percent (20%) of control of Borrower's business assets to another entity without the prior written approval of Lender.

Section 7.22 – REPORT OF DEFAULT. Within five (5) days of becoming aware of an event constituting an Event of Default under Article VIII, Borrower shall provide to Lender a written notice disclosing such event in reasonable detail.

Section 7.23 – SPECIAL CONDITIONS. Borrower shall comply with any additional requirements set forth in Exhibit G, if any.

ARTICLE VIII – DEFAULT AND REMEDIES

Section 8.1 - EVENTS OF DEFAULT. The occurrence of any one or more of the following may constitute an event of default ("*Event of Default*") under this Agreement and the other Loan Documents:

- (a) Monetary. Borrower's failure to make any payment when due under the Note or any of the other Loan Documents;
- (b) Performance of Obligations. Borrower's failure to perform any term or condition of this Agreement or any other Loan Documents; provided, however, that if a cure period is provided for the remedy of such failure, Borrower's failure to perform will not constitute a Default until such date as the specified cure period expires;
- (c) Representations and Warranties. Any representation or warranty made by Borrower, or anyone acting on its behalf, ultimately determined to be incorrect in any material respect;
- (d) Construction. Failure of the Borrower to complete the Development, as described in any of the Loan Documents, within the term of the Loan Agreement, including any extensions;

(e) Eligibility Requirements. Any changes to the Development such that it no longer meets the program eligibility requirements;

(f) Liens; Condemnation. (i) The recording of any claim of lien against the Property or Improvements or the service on Lender of any bonded stop notice relating to the Loan and the continuance of such claim of lien or bonded stop notice for thirty (30) days without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to Lender; or (ii) the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty with respect to any material portion of the Property or Improvements;

(g) Failure to Comply with Laws. Borrower fails to comply with any law, regulation or rule applicable to the Development, including without limitation the Program Requirements;

(h) Attachment. Borrower fails to promptly pay and discharge any judgment or levy of attachment, execution or other process against the assets of Borrower, and such judgment is not satisfied, or such levy or other process is not removed within twenty (20) days after the entry or levy thereof;

(i) Any Voluntary Bankruptcy; Insolvency; Dissolution. (A) The filing of a petition by Borrower for relief under the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) ("Bankruptcy Code"), or under any other present or future State or federal law regarding bankruptcy, reorganization or other debtor relief law; (B) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (C) a general assignment by Borrower for the benefit of creditors; or (D) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property;

(j) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, the Property or the Improvements, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or ninety (90) days after the date of filing of such involuntary petition;

(k) Death or Incapacity of Borrower. The death or incapacity of Borrower, if an individual;

(l) Prohibited Transfers or Reorganization. Except as permitted in the Loan Documents, the transfer of any interest in the Development or the transfer or syndication of equity interests in Borrower; or Borrower reorganizes, merges, consolidates, or otherwise changes ownership without Lender's prior written consent.

(m) Loss of Priority. The failure at any time of the Deed of Trust to be a valid lien upon the Property and Improvements or any portion thereof, other than as a result of any release or reconveyance of the Deed of Trust with respect to all or any portion of the Property and Improvements pursuant to the terms and conditions of this Agreement;

(n) Hazardous Materials. The discovery of any significant Hazardous Materials not disclosed by Borrower in, on or about the Property or Improvements

subsequent to the Effective Date. Any such Hazardous Materials shall be "significant" for this purpose if said Hazardous Materials, in Lender's sole discretion, have a materially adverse impact on the value of the Property and Improvements;

(o) Transfer of Assets. Except as permitted by the Loan Documents, the sale, assignment, pledge, hypothecation, mortgage or transfer of all or a substantial portion of assets of Borrower; or

Section 8.2 – NOTICE OF BORROWER'S DEFAULT AND OPPORTUNITY TO CURE. Lender shall give written notice to Borrower of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the Event of Default, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible, except with respect to a monetary Event of Default, so long as Borrower has commenced to cure within such time, then Borrower shall have a reasonable period thereafter within which to fully cure the Event of Default.

Section 8.3 - LENDER'S REMEDIES. The occurrence of an Event of Default, following the expiration of all applicable notice and cure periods, will, either at the option of Lender or automatically where so specified relieve Lender of the obligation to disburse the Loan proceeds, and Lender may in addition to any and all remedies permitted by law, and as set forth in this Agreement and the Loan Documents proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

- (a) **Acceleration.** Declare all sums owing to Lender under the Note, this Agreement and the other Loan Documents immediately due and payable. Upon such acceleration, any and all obligations of Lender to fund further disbursements under the Agreement shall terminate;
- (b) **Recapture.** Recapture all or some portion of the Loan proceeds disbursed to Borrower. Recapture shall be proportionate to the scale and duration of the uncorrected noncompliance relative to the 15-year initial compliance period;
- (c) **Notify Government Entities.** Notify Federal, state and local entities of Borrower's provision of false information;
- (d) **Ineligibility.** Notify Borrower that it will be ineligible for future financing under the any low income housing tax credit program administer by Lender.
- (e) **Specific Performance.** Have the right to mandamus or other suit, action or proceeding at law or in equity to (1) require Borrower to perform its obligations and covenants under the Loan Documents, and/or (2) enjoin, abate, or prevent any violation of the terms and conditions of the Loan Documents, and/or (3) seek declaratory relief;
- (f) **Other Remedies.** Lender shall have the right to exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, law, equity or otherwise, including obtaining the appointment of a receiver (to which Borrower hereby consents) and/or judicial or nonjudicial foreclosure under the Deed of Trust and apply against any indebtedness secured by the Deed of Trust, to the extent thereof and to the

maximum extent permitted by law, any and all deposits, funds, or assets in which Lender has been granted a security interest pursuant to any Loan Document.

Section 8.4 – RIGHT OF CONTEST. Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment (other than liens and stop notices) by any person other than Lender which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to Lender or the rights of Lender hereunder, and Borrower shall provide to Lender such security or other assurances, reasonably satisfactory to Lender, as shall be required in the judgment of Lender to ensure that such contest shall not materially adversely impair the construction or operation of the Development or any security held by Lender.

Section 8.5 – REMEDIES CUMULATIVE. No right, power, or remedy given to Lender by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to Lender by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 8.6 – WAIVER. Lender may waive any Event of Default, in its sole and absolute discretion, upon a finding that it is in the public interest and advances the purposes of the program.

ARTICLE IX – MISCELLANEOUS

Section 9.1 – INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER, ITS DIRECTORS, OFFICERS, 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 ATTORNEY FEES AND EXPENSES), EXCEPT ARISING SOLELY FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, WHICH LENDER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF: (A) THE PURPOSE TO WHICH BORROWER APPLIES THE LOAN PROCEEDS; (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 OR MEMBER OF BORROWER, ANY CONTRACTOR, SUBCONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON OR ENTITY WITH RESPECT TO ANY OF THE PROPERTY OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO LENDER UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.

Section 9.2 – TERM OF THIS AGREEMENT. This Agreement shall commence on the date set forth above and remain in full force and effect for the full term of the Loan.

Section 9.3 – FORM OF DOCUMENTS. The form and substance of all documents, instruments, and forms of evidence to be delivered to Lender under the terms of this Agreement and any of the other Loan Documents shall be subject to Lender's approval and shall not be modified, superseded or terminated in any respect without Lender's prior written approval.

Section 9.4 – NO THIRD PARTIES BENEFITED. No person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents. This provision shall not impair the right of any limited partner of Borrower to cure any Default on Borrower's behalf.

Section 9.5 – DELAY OUTSIDE LENDER'S CONTROL. Lender shall not be liable in any way to Borrower or any third party for Lender's failure to perform or delay in performing under the Loan Documents (and Lender may suspend or terminate all or any portion of Lender's obligations under the Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any governmental or local authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of Lender deemed probable), or from any Act of God or other cause or event beyond Lender's control.⁵⁹¹

Section 9.6 – COSTS OF COLLECTION. Borrower agrees to pay Lender all reasonable costs incurred in collection of amounts due under this Agreement which are not paid within ten (10) days of the due date as specified herein, without regard to whether legal action has been filed.⁵⁹³

Section 9.7 – ATTORNEY FEES AND EXPENSES; ENFORCEMENT. If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, any of the other Loan Documents or Other Related Documents, or as a consequence of any Event of Default under the Loan Documents, with or without the filing of any legal action or proceeding, and including, without limitation, any fees and expenses incurred in any bankruptcy proceeding of the Borrower, then Borrower shall immediately pay to Lender, upon demand, the amount of all attorney fees and expenses and all costs incurred by Lender in connection therewith, including allocated fees and expenses of Lender's in-house counsel, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein.

Section 9.8 – GOVERNING LAW. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. Borrower and all persons and entities in any manner obligated to Lender under the Loan Documents consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

Section 9.9 – NO WAIVER. Any waiver by Lender of any obligation in this Note must be in writing. No waiver shall be implied from any failure of Borrower to take, or any delay or failure by Lender to take action on any breach or default or Event of Default by Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under the Note. Borrower hereby waives all defenses and

pleas on the grounds of any extensions of the time for repayment of any amounts due under this Note, unless Lender has granted such extensions in writing. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other act or omission or to waive the requirement for Lender's written consent to future waivers.

Section 9.10 – NOTICES. All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement):

Borrower: **BORROWER NAME**
ADDRESS
Attn: CONTACT PERSON

Lender: California Tax Credit Allocation Committee
915 CAPITOL MALL, ROOM 485
Sacramento, CA 95814

All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of an Event of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Section 9.11 – LENDER'S RIGHT TO INSPECT RECORDS. Borrower is required to maintain adequate books, accounts, and records and to prepare all financial statements required under this Agreement in compliance with the regulations of any governmental regulating body having jurisdiction over it, and permit employees or agents of Lender at any reasonable time, to inspect Borrower's properties, and to examine Borrower's books, accounts, records and make copies and memoranda of them. These records shall include, without limitation, employment information records as well as business and financial records.

Section 9.12 – BINDING UPON SUCCESSORS. All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Borrower without Lender's consent. The term "Borrower" as used in this Agreement shall include all assigns, successors-in-interest, and transferee of Borrower.

Section 9.13 – RELATIONSHIP OF PARTIES. The relationship of Borrower and Lender for the Development and this Loan is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided herein) or to any third party with respect to Borrower, the Development or the TCAP (or TCEP) Loan. Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.

Section 9.14 - LENDER'S AGENTS. Lender may designate an agent or independent contractor to exercise any of Lender's rights under this Agreement and any of the other Loan Documents. Any reference to Lender in any of the Loan Documents shall include Lender's agents, employees or independent contractors. Borrower shall pay the costs of such agent or independent contractor either directly to such person or to Lender in reimbursement of such costs, as applicable.⁶²¹

Section 9.15 – ASSIGNMENT AND ASSUMPTION. Borrower shall not assign any of its interests under this Agreement or the Loan Documents to any other party, except as specifically permitted under the terms of this Agreement or the Loan Documents, without the prior written consent of Lender. Any unauthorized assignment shall be void.

Section 9.16 – AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be effective only if executed by both Borrower and Lender. In any event, pursuant to the Regulations no TCAP (or TCEP) Loan may be extended for more than two years except by the Lender which may grant additional extensions upon a finding that it is in the public interest and furthers the purposes of the program.

Section 9.17 – TIME. Time is of the essence in this Agreement.

Section 9.18 – INTEGRATION; INTERPRETATION. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede any and all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.

Section 9.19 – SEVERABILITY. If any provision or obligation under this Agreement and the other Loan Documents shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired by such holding and shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents, provided, however, that if the rate of interest or any other amount payable under the Note or this Agreement or any other Loan Document, or the right of collectibility therefore, is declared to be or become invalid, illegal or unenforceable, Lender's obligations to make advances under the Loan Documents shall not be enforceable by Borrower.

Section 9.20 – HEADINGS. All article, section or other headings appearing in this Agreement and any of the other Loan Documents are for convenience of reference only and shall be disregarded in construing this Agreement and any of the other Loan Documents.

Section 9.21 – JOINT AND SEVERAL LIABILITY. The liability of all persons and entities obligated in any manner under this Agreement and any of the Loan Documents shall be joint and several.

Section 9.22 – EXECUTION OF COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute a single document provided, however that only the counterpart delivered to the Lender shall be deemed the original. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in day and year first hereinabove written.

BORROWER:

BORROWER NAME

By: _____

CONTACT NAME, CONTACT TITLE

LENDER:

California Tax Credit Allocation Committee

By: _____

Exhibits

- A Property
- B Application
- C Loan Documents
- D Eligible Costs
- E Right of First Refusal Agreement
- F Form of Disbursement Request
- G Special Conditions

EXHIBIT A – DESCRIPTION OF PROPERTY

Property Description

EXHIBIT B – APPLICATION

EXHIBIT C – LOAN DOCUMENTS

Loan Documents. The documents listed below and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are “Loan Documents” for purposes of this Agreement are collectively referred to herein as the Loan Documents.

1. This Agreement.
2. The Promissory Note in the original principal amount of the Loan made by Borrower payable to the order of Lender.
3. The Deed of Trust with Assignment of Rents Security Agreement and Fixture Filing.
4. The Regulatory Agreement.
5. UCC-1 Financing Statement, showing Borrower as Debtor and Lender as Secured Party [and UCC-3 showing Borrower as secured party with respect to Tax Credit Limited Partner and Lender as assigned of secured party].
6. Subordination Agreement(s) executed by [City of _____, Redevelopment Lender of the City of _____, other existing lender] _____ and Borrower.
7. [Tri-Party Agreement executed by Lender, Borrower, and Construction Lender.]
8. Borrowing resolutions satisfactory to Lender.
9. Application (to the extent not inconsistent with express terms of other Loan Documents).
10. Right of First Refusal between Borrower and Lender.

Other Related Documents

1. Signature Authorization Form of even date herewith executed by Borrower.
2. Documents evidencing loans providing additional financing for the development and secured by subordinate liens or unsecured.

EXHIBIT D –ELIGIBLE COSTS

1. Tax Credit Assistance Program (TCAP) funds must be used for capital investment in eligible Low Income Housing Tax Credit projects. Capital investment means costs that are included in the “eligible basis” of a project under Section 42 of the Internal Revenue Code, costs of land acquisition, on-site demolition costs, and hazardous material remediation costs. Section 1604 of the Recovery Act specifically prohibits the use of TCAP funds for swimming pools.
2. Section 1602 program funds may be used to pay for any project development cost.
3. Eligible costs for projects funded with either TCAP or Section 1602 funds will be as stated in the final sources and uses statement submitted to and accepted by Lender.

EXHIBIT E – RIGHT OF FIRST REFUSAL AGREEMENT

EXHIBIT F –FORM OF DISBURSEMENT REQUEST

EXHIBIT G – SPECIAL CONDITIONS

Borrower agrees to develop and manage the project in compliance with the following Federal grant requirements:

Section G-1. COMMITMENT of FUNDS. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such a commitment of funds or approval may occur only upon satisfactory completion of the federal environmental review and receipt by the California Tax Credit Allocation Committee (Lender) of an executed “Authority to Use Grant Funds” (HUD 7015.16) or equivalent letter. The parties further agree that the provision of any funds to the project is conditioned on the Lender’s determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. The Borrower and its contractors are prohibited from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction, or leasing or disposition prior to the execution of the “Authority to Use Grant Funds” (HUD 7015.16) or equivalent letter. Violation of this provision may result in the denial of any funds under the agreement.

Section G-2 – COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT. Borrower shall comply with the National Environmental Policy Act (NEPA) contained in 42 USC Sections 4321-4347 and the implementing regulations at 24 CFR 50 and 58, to the extent that law applies to the Development. No actions by any party (including the developer, owner, or sponsor) shall be undertaken for any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR 58.22 until HUD or the Committee has issued an environmental clearance.

Section G-3 – COMPLIANCE WITH DAVIS-BACON ACT. Borrower shall comply with the Davis Bacon Act, 40 U.S.C. 3141, and regulations promulgated thereunder, to the extent that law applies to the Development.

Section G-4 – COMPLIANCE WITH STATE PREVAILING WAGE LAWS. Borrower shall comply with California’s prevailing wage law (California Labor Code Section 1720, *et seq.*) to the extent that law applies to the Development.

Section G-5 – SECTION 504. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.

Section G-6 – THE AGE DISCRIMINATION ACT of 1975 – (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.”

Section G-7 – FAIR HOUSING ACT. (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity Housing).

Section G-8 – LEAD BASED PAINT. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35 are applicable to rehabilitation project. HUDs Interpretive guidance for Lead Safe Housing is found at:
http://portal.hud.gov/portal/page/portal/RECOVERY/programs/TCAP_RESOURCES/TCAP-LBP-GUIDE.pdf

Section G-9 – CIVIL RIGHTS ACT. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.

Section G-10 – AFFIRMATIVE MARKETING. When marketing TCAP units, the Borrower must comply with the TCAP affirmative fair housing marketing plan and procedures established by the California Tax Credit Allocation Committee.

Section G-11 – PROCUREMENT. 2 CFR Part 2424 “Non-procurement Debarment and Suspension”. The Borrower cannot award a contract to a contractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs. The borrower must comply with subpart C of 2CFR Part 180, as required by 2 CFR Part 2424.

Section G-12 – REQUIRED SIGNAGE – Project signage must be posted in a manner consistent with criteria established by HUD and Lenders. Signage requirements are posted on the California Tax Credit Allocation Committee website at <http://www.treasurer.ca.gov/ctcac/arra.asp>.

**EXHIBIT H – Certification for Contracts, Grants Loans,
and Cooperative Agreements
(24 CFR Part 87)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

BORROWER:

BORROWER NAME

By: _____

CONTACT NAME, CONTACT TITLE