

AGREEMENT NUMBER ARRA CA-2009-__

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
HCD BACKFILL LOAN AGREEMENT**

**(BORROWER NAME)
(BORROWER ADDRESS)**

A. This *Loan Agreement* (the “**Agreement**” or “**Loan Agreement**”) is made this _____ day of _____, 2010, between, _____, a _____ (the “**Borrower**”) and the *California Tax Credit Allocation Committee, a public agency of the State of California* (the “**Committee**”). If Tax Credit Assistance Program funds are being used to fund the Loan 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 or ground leasehold] interest in the certain real property described in Exhibit A (the "Property").
- C. Borrower proposes to [construct or rehabilitate] or [has constructed or has rehabilitated] on the Property certain improvements as described in the Application (defined below and attached as Exhibit B) (the "**Improvements**").
- D. The Committee has the authority to receive the HUD Grant (the “**Federal Grant**”) and use the proceeds of the Federal Grant to provide financial assistance to qualified affordable housing developments.
- E. Borrower has secured approval from HCD for a takeout MHP loan for the Project which loan is expected to fund as soon as HCD can access the funds. Borrower wishes to borrow funds from the Committee in the form of a Bridge Loan in advance of HCD being able to access funds with the understanding that the HCD loan proceeds when available will be used to repay the Loan.
- F. The Development (defined below) meets the Program Requirements (defined below), and the Committee has approved the funding of the Loan.

NOW, THEREFORE, the Committee 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 those 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.

“**Bridge Loan**” means a loan provided by the Committee to the Borrower as Takeout Financing at the conclusion of construction and in advance of the anticipated funding of approved Takeout Financing from HCD.

“**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 to be executed by Borrower as trustor for the benefit of the Committee, 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.

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

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

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

“**HCD**” means the California Department of Housing and Community Development.

“**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 the Committee 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 the Committee, 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.

“**Permanent Financing Phase**” shall mean the period commencing on the close of this Loan and ending upon the repayment of the permanent Loan.

“**Permanent Lender**” means any lender to the Borrower with a Deed of Trust senior to the Deed of Trust securing the Loan.

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

“**Regulations**” mean the Committee’s Regulations implementing the Federal and State Low Income Housing Laws (CCR Title 4, Division 17, Chapter 1) in effect as of the Effective Date.

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

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

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

“**Takeout Financing**” means a loan provided to pay off the Construction Financing upon completion of the Development as evidenced by a final Certificate of Occupancy or building permit signoff issued by the local building authority.

“**TCAP**” means the Tax Credit Assistance Program, through which HUD awards grants (“**TCAP Funds**”) to the Committee to provide funding to complete construction or rehabilitation 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, the Committee agrees to lend to Borrower and Borrower agrees to borrow from the Committee 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 repay the Construction Lender and other related costs 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 Loan shall accrue 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. Except as provided in Section 2.6, Borrower shall have no obligation to make any payments of principal to reduce the outstanding balance of the Loan prior to maturity as provided in the Note.

Section 2.4 – LOAN DOCUMENTS. Borrower shall deliver to the Committee, 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 the Committee of the security under the Loan Documents (other than this Loan Agreement) and of Borrower's and the Committee's obligations under the Loan Documents (other than this Loan Agreement) 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 concurrently with the timely closing of the MHP loan from HCD or fifty-five years from the Effective Date, whichever is earlier.

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, or members of the Borrower. Notwithstanding anything in this paragraph 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 which were 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; 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 the Committee 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 the Committee.

Section 2.9 – FULL REPAYMENT AND RECONVEYANCE. Upon receipt of all sums owing and outstanding under the Loan Documents, the Committee 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) the Committee 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) the Committee shall have received a written release satisfactory to the Committee of any set aside letter, letter of credit or other form of undertaking which the Committee has issued to any surety, governmental agency or any other party in connection with the Loan and/or the Property and Improvements. The Committee'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 the Committee 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 under any Loan Document remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by the Committee, the following policies of insurance and such other coverage as may be required by the Committee in form and substance satisfactory to the Committee:

(a) Property insurance covering the Development, in form appropriate for the nature of such Property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Committee, naming the Committee as a Loss Payee, as its interests may appear.

(b) Liability. A policy of comprehensive general liability insurance with limits as required by the Committee, 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 the Committee may require.

(d) During the Permanent Financing Phase, the Committee shall accept the same insurance coverage as accepted by the Permanent Lender.

Section 3.2 – GENERAL. Borrower shall provide to the Committee certificates of insurance evidencing all required insurance policies, or other evidence of insurance acceptable to the Committee. Notwithstanding the foregoing, the Committee reserves the

right, in its sole discretion, to require the Borrower to provide the Committee with certified copies of 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 the Committee. The Committee shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all insurance policies which Borrower actually maintains with respect to the Property and Improvements.

ARTICLE IV - LOAN DISBURSEMENT PROCEDURES

Section 4.1 – CONDITIONS PRECEDENT. The Committee'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 the Committee executed originals of all Loan Documents and all other documents, instruments, policies, and forms of evidence or other materials requested by the Committee 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 the Committee. For purposes of the opinion regarding Article XXXIV, Borrower's counsel may assume that the Committee is carrying out routine governmental functions and/or performing conventional activities of a lender.

(b) Review and Approval of Certain Documents Affecting the Development. The Committee 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 the Committee'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 applicable funding conditions in accordance with Section 4.2 of this Agreement, including but not limited to proof of acceptable funding commitments for take - out financing and evidence acceptable to the Committee 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 provide the Committee with such documentation as the Committee requires to confirm the application or proposed application of Loan funds to payment of Eligible Costs.

(f) Final Budget and Schedule. Borrower shall submit to the Committee a final sources and uses statement, including total development costs.

(i) Disbursement Request. Borrower shall have submitted to the Committee 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 the Committee and acknowledged. Disbursement Requests may include Eligible Costs previously funded by the Construction Lender.

Section 4.2 – DISBURSEMENTS; THE COMMITTEE AUTHORIZATION. Backfill Loan proceeds shall be disbursed to Borrower upon evidence of eligible costs incurred following completion of the entire Development as evidenced by a temporary Certificate of Occupancy or Notice of Completion issued by the local building authority or seventy-five percent (75%) of the Backfill Loan amount by February 1, 2011 with the remainder following completion of the entire Development as evidenced by a temporary Certificate of Occupancy.

The Committee 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, the Committee 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 the designated title company for repayment of the Construction Lender.; 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 4.3 – 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 (including repayment of Construction Loan proceeds used to pay for Eligible Costs). The amount of all ineligible Loan expenditures shall be immediately repaid to the Committee.

Section 4.4 – REVIEW OF DOCUMENTS; COMMITTEE APPROVAL. The Committee’s approval, review or modification of the certifications or other documents related to the Development is for the Committee’s internal purposes only. Any Committee 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, the Committee 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 the Committee is at the Committee’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 the Committee’s entry into this Agreement, Borrower represents and warrants to the Committee 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 or shall obtain when required, 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 consists of one or more legal parcels lawfully existing in full compliance with all subdivision laws and ordinances.

Section 5.5 – LITIGATION. Except as disclosed to the Committee 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. To the best of Borrower's knowledge, all reports, documents, instruments, information and forms of evidence delivered to the Committee concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give the Committee 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 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 the Committee, 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. Except as disclosed in writing to the Committee, 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. Except as disclosed in writing to the Committee, there are no claims or actions pending or threatened against Borrower, the Property or Improvements by any governmental entity or the Committee 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. Except as disclosed in writing to the Committee, 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 the Committee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property and Improvements; (ii) any knowledge by [Borrower] the Committee 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 THE COMMITTEE. Upon reasonable prior written notice to Borrower, the Committee, 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 THE COMMITTEE, 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 THE COMMITTEE 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 THE COMMITTEE 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 THE COMMITTEE SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST BUT SHALL NOT INCLUDE ANY ACTIONS TAKEN BY THE COMMITTEE OR ANY SUBSEQUENT OWNER OF THE PROPERTY.

Section 6.5 – LEGAL EFFECT OF SECTION. Borrower and the Committee agree that: (a) this Article VI is intended as the Committee'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 the Committee 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 the Committee 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 concurrently with this Loan.

Section 7.2 – PROJECT COMPLETION. Borrower shall provide to the Committee a Certificate of Occupancy or other building permit signoff, to be issued by the local building authority for the Improvements or recorded Notice of Completion no later than December 1, 2011 as a condition to Closing. 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 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 (other than utility or similar easement related to the construction of the Project) covering any portion of the Property, Borrower shall submit such Subdivision Map or easement to the Committee for the Committee's

review and approval, which approval shall not be unreasonably withheld. Borrower shall execute, acknowledge and deliver to the Committee such amendments to the Loan Documents as the Committee may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map or easement and the Committee agrees to execute and deliver to Borrower for recordation in the Official Records of the county in which the Property is located any and all amendments to the Loan Documents or releases or quitclaim deeds to reflect such new legal description.

Section 7.5 – FURTHER ASSURANCES. Upon the Committee'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 the Committee, 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 the Committee 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 the Committee would not make this Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing commercial real property and the Committee's knowledge of Borrower.

Section 7.7 – MANAGEMENT OF PROPERTY. Borrower shall have provided a Management Agreement for the Property with Manager as management agent (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 Committee, and without penalty, upon thirty (30) days prior written notice to the Manager, provided, however, the Committee shall not have the right to terminate the Management Agreement at any time during which Borrower is not in default under the Loan Documents. 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 Committee, 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 Committee shall have the right to make such alternative arrangements with the consent of the Permanent Lender, as applicable. 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 without the prior written consent of the Committee.

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 prior to delinquency any and all indebtedness, obligations, assessments, taxes (real and personal), including Federal and state income taxes, provided that Borrower may contest any such obligation provided that provision is made to the satisfaction of the Committee 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 the Committee of any administrative action or litigation pending or threatened against Borrower, or the Development in which the amount claimed is in excess of \$25,000 and is not fully covered by insurance.

Section 7.12 – CHANGE IN STATUS/UNINSURED LOSS. Borrower shall promptly give notice in writing to the Committee 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; or (2) any uninsured or partially uninsured loss through fire, theft, liability or otherwise in an aggregate of \$25,000.

Section. 7.13 – RELEASE. Borrower shall waive all claims and recourse against the Committee 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 the Committee hereunder.

Section 7.14 – 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 7.15 – 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 7.16 – 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 7.17 – INSURANCE. Borrower shall maintain any and all required insurance policies for the term of this Agreement.

Section 7.18 – REPORTING TO THE COMMITTEE. Borrower shall timely provide all required monthly and other reports and notices to the Committee during the term of this Agreement.

Section 7.19 – USE OF FUNDS. Borrower shall not use any Loan proceeds for purposes other than as described in Exhibit D.

Section 7.20 – 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 the Committee.

Section 7.21 – 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 the Committee a written notice disclosing such event in reasonable detail.

Section 7.22 – 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 an Event of 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, is ultimately determined to have been incorrect in any material respect when made;
- (d) Eligibility Requirements. Any changes to the Development such that it no longer meets the program eligibility requirements;
- (e) Liens; Condemnation. (i) The recording of any claim of lien against the Property or Improvements or the service on the Committee of any bonded stop notice relating to the Loan and the continuance of such insurance over 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 the Committee; or (ii) the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty for which insurance was required by the terms of the Loan Documents 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 unless Borrower contests any such judgment, levy or lien in good faith;
- (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 the Committee 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 in violation of the Loan Documents without the Committee'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 the Committee's sole discretion, have a materially adverse impact on the value of the Property and Improvements; or

(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.

Section 8.2 – NOTICE OF BORROWER'S DEFAULT AND OPPORTUNITY TO CURE. The Committee 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 sixty (60) 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 – COMMITTEE'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 the Committee or automatically where so specified relieve the Committee of the obligation to disburse the Loan proceeds, and the Committee 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 the Committee may choose in its sole discretion:

(a) Acceleration. Declare all sums owing to the Committee under the Note, this Agreement and the other Loan Documents immediately due and payable. Upon such acceleration, any and all obligations of the Committee 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 administered by the Committee;

(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; or

(f) Other Remedies. The Committee 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 the Committee 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 by any person other than the Committee which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Committee or the rights of the Committee hereunder, and Borrower shall provide to the Committee such security or other assurances, reasonably satisfactory to the Committee, as shall be required in the judgment of the Committee to ensure that such contest shall not materially adversely impair the construction or operation of the Development or any security held by the Committee.

Section 8.5 – REMEDIES CUMULATIVE. No right, power, or remedy given to the Committee 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 the Committee by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Committee to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Committee 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. The Committee 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 THE COMMITTEE, 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 THE COMMITTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, WHICH THE COMMITTEE 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 THE COMMITTEE UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMMITTEE SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST. With respect to principal and interest owed on the Note, the foregoing indemnification obligation is subject to the limitations on recourse in the Note and 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 the Committee under the terms of this Agreement and any of the other Loan Documents shall be subject to the Committee's approval and shall not be modified, superseded or terminated in any respect without the Committee's prior written approval.

Section 9.4 – NO THIRD PARTIES BENEFITED. No person other than the Committee 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 THE COMMITTEE'S CONTROL. The Committee shall not be liable in any way to Borrower or any third party for the Committee's failure to perform or delay in performing under the Loan Documents (and the Committee may suspend or terminate all or any portion of the Committee's obligations under the Loan Documents), and Borrower shall not be in default hereunder if Borrower fails to timely perform its obligations hereunder 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 the Committee deemed probable), or from any Act of God or other cause or event beyond the Committee control.

Section 9.6 – COSTS OF COLLECTION. In the event Borrower is in default under this Agreement, Borrower agrees to pay the Committee 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.

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 – THE COMMITTEE'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 the Committee at any reasonable time, to inspect the Development and to examine Borrower's books, accounts, and records applicable to the Development 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 the Committee's consent. The term "Borrower" as used in this Agreement shall include all assigns, successors-in-interest, and transferees of Borrower.

Section 9.13 – RELATIONSHIP OF PARTIES. The relationship of Borrower and the Committee 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. The Committee 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 Loan. Borrower shall have no authority to act as an agent of the Committee or to bind the Committee to any obligation.

Section 9.14 – COMMITTEE'S AGENTS. The Committee may designate an agent or independent contractor to exercise any of the Committee's rights under this Agreement and any of the other Loan Documents. Any reference to the Committee in any of the Loan Documents shall include the Committee's agents, employees or independent contractors.

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 the Committee. 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 the Committee. In any event, pursuant to the Regulations no TCAP Loan may be extended for more than two years except by the Committee 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 the Committee 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 collectability therefor, is declared to be or become invalid, illegal or unenforceable, the Committee'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 Committee 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.

ARTICLE X - TAX CREDIT PROVISION

(TO BE USED IN TRANSACTIONS WITH TAX CREDIT EQUITY INVESTORS)

Section 10.1 – DEFINITIONS.

(a) “Limited Partner” means collectively _____, a _____ who acts as the [Investor] Limited Partner of the Borrower and _____, a _____ who acts as the Limited Partner of the Borrower, each of their respective successors and assigns.

(b) “Partnership Agreement” means Borrower's Agreement of Limited Partnership (as amended from time to time).

Section 10.2 – REMOVAL OF GENERAL PARTNER. Notwithstanding anything to the contrary contained in the Loan Documents, removal, or withdrawal in lieu of removal, of Borrower's general partner(s) for cause in accordance with, the Partnership Agreement shall not require the consent of the Committee and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If such general partner is removed, or withdraws in lieu of removal, the Committee shall not unreasonably withhold its consent to the admission of a substitute general partner; provided that if a Limited Partner designates itself or an affiliate as the substitute general partner, the Committee consent to the admission of such substitute general partner shall not be required. Any amendment to Borrower's Partnership Agreement to effectuate such removal or withdrawal and such admission of the substitute general partner shall not require Committee consent.

Section 10.3 – ASSIGNMENT OF LIMITED PARTNER INTERESTS. Notwithstanding anything to the contrary contained in the Loan Documents, the respective interests of Limited Partners in the Borrower, or any partnership or membership interest within the Limited Partner, shall be freely transferable and any amendment to Borrower's Partnership Agreement to effectuate such transfers shall not require Committee consent.

Section 10.4 – LIMITED PARTNER RIGHT TO NOTICE REGARDING DEFAULT AND RIGHT TO CURE. Notwithstanding anything to the contrary contained in the Loan Documents, the Committee hereby agrees that any cure of any default made or tendered by a Limited Partner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

Copies of all notices which are sent to Borrower under the terms of the Loan Documents shall also be sent to the Limited Partner at the following address:

Section 10.5 - INSURANCE AND CONDEMNATION PROCEEDS.

Notwithstanding anything to the contrary contained in the Loan Documents, in the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project, or any part thereof, Borrower shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to the Committee for repayment of the Loan, or if such proceeds are insufficient then Borrower shall have funded any deficiency, (b) the Committee shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no continuing material default then exists by Borrower under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Committee for repayment of the remaining balance of the Loan.

Section 10.6 - EXTENDED USE AGREEMENT. The Committee acknowledges that Borrower and the Committee intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement required by the Committee is recorded against the project, the Committee agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

Section 10.7 - INCONSISTENCY. In the event of any inconsistency or conflict between the covenants, terms and conditions of any of the Loan Documents and Article X, the covenants, terms and conditions of this Article shall control.

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

The Committee:

California Tax Credit Allocation Committee

By: _____

William J. Pavão, Executive Director

Exhibits

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

EXHIBIT A – DESCRIPTION OF PROPERTY

Property Description

PROJECT NAME & ADDRESS

Owner:
Contact:

Construction Type: New Construction
Total Residential Buildings:
Total number of units:
Total number of low-income LIHTC qualified units:
Total number of Section 504 accessible units:
Total number of Energy Star qualified units:
Amount and form of TCAP assistance (Loan):
Amount of 2009 – 9% Credit Retained:

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 the Committee, together with any documents executed in the future that are approved by the Committee and that recite that they are “Loan Documents” for purposes of this Agreement are collectively referred to herein as the Loan Documents.

This Agreement.

The Promissory Note in the original principal amount of the Loan made by Borrower payable to the order of the Committee.

The Deed of Trust with Assignment of Rents Security Agreement and Fixture Filing.

The Regulatory Agreement.

UCC-1 Financing Statement, showing Borrower as Debtor and the Committee as Secured Party [and UCC-3 showing Borrower as secured party.

Subordination Agreement(s) executed by [City of _____, Redevelopment Lender of the City of _____, other existing Lender _____ and Borrower.

Tri-Party Agreement executed by the Committee, Borrower, and Construction Lender.

Borrowing resolutions satisfactory to the Committee.

Application (to the extent not inconsistent with express terms of other Loan Documents).

Right of First Refusal between Borrower and the Committee. (N/A)

Other Related Documents

Signature Authorization Form of even date herewith executed by Borrower.

Documents evidencing Loan 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 1602 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 the Committee. The repayment of construction Grant used to fund Eligible Costs shall be an Eligible Cost.

EXHIBIT E – RIGHT OF FIRST REFUSAL AGREEMENT (N/A)

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 (the Committee) 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 Committee’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 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 the Committee. Signage requirements are posted on the Committee website at: <http://www.treasurer.ca.gov/ctac/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:

By: _____

CONTACT NAME, CONTACT TITLE